

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-193/2016-DD/247/16/BOD/354/2017]

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:

Shri Benny John,
Director of Income Tax (Investigation),
Kochi

..... Complainant

Versus

CA. K. I. John (M. No. 004255)
M/s Cheriyan and Cheriyan,
Chartered Accountants,
Kottayam

..... Respondent

DATE OF FINAL HEARING : 16th December, 2022
PLACE OF FINAL HEARING : New Delhi / through
video conferencing

FOLLOWING WERE ALSO PRESENT: (Through Video Conferencing)

COUNSEL FOR THE RESPONDENT : CA. Banusekar Thyagarajan
(along with CA. Iype John, son
of the Respondent)

WITNESS NO. 1 : Shri Venkitesan Gopalanachary
alongwith his Colleague's friend
Ms. Divya (for the purpose of
translation from english to
vernacular language and vice-
versa)

WITNESS NO. 2 : Shri T. V. Thomas
DIRECTOR (DISCIPLINE) : CA. Sanjay Kumar Goyal

BACKGROUND OF CASE:

- 1.1. The complaint pertains to filing of forged affidavits before Income Tax Authorities with an objective to escape tax liability.
- 1.2. Such fraudulent practice has been observed in almost all the search cases represented by the Respondent.
- 1.3. In all these cases, the assessee is made to file an affidavit purportedly in the name of one of the witnesses (sometimes both witnesses/ Panchas) of the search. In the said affidavit, it would be stated that the Panchas has not witnessed the search and the search took place without the presence of Panchas.
- 1.4. The fact that such affidavits are produced only in cases represented by the Respondent gave rise to suspicion.
- 1.5. All these affidavits were sent for forensic examination (along with genuine signatures of Panchas, available in Panchnama and annexures). In the forensic examination, it was revealed that signatures in the affidavit were forged.
- 1.6. One such instance is the search in the case of M/s. Aleppey Financial Enterprises (searched in 1997). True copy of the affidavit purportedly signed by Shri Suresh K P (one of the panchas of the search) to the effect that he didn't witness the search was attached by the Complainant alongwith the complaint.
- 1.7. Report of the forensic lab clearly stating that the signature in the affidavit was not put by the person who signed the Panchnama and other documents (genuine signatures of Shri Suresh K P) was also attached by the Complainant alongwith the complaint.
- 1.8. A comparison of forged signatures in four other cases with respective genuine signatures was also annexed by the Complainant.
- 1.9. The fact that such forgery has happened only in those cases represented by Respondent clearly points to his active involvement in the crime. As per the Complainant, the conduct of the Respondent has clearly brought disrepute to the profession of Chartered Accountancy.

CHARGE ALLEGED:

- 2.1. The crux of allegations in the instant case relates to filing of forged Affidavits before Income Tax Authorities with an objective to escape tax liability. The Complainant alleged that such fraudulent practice has been observed in the cases represented by the Respondent.
- 2.2. The Board at its meeting held on 25th October, 2017 considered the Prima Facie Opinion dated 5th August, 2017 of the Director (Discipline) along with the Complaint, Written Statement, Rejoinder and additional submission on record. The Board on consideration of the same, noted that search had been conducted under Section 132 of the Income Tax Act 1961 in respect of the client of the Respondent and accordingly assessment of the income of the client under Section 153A of the Income Tax Act 1961 had been initiated and Orders passed thereunder which were appealed by the client on the ground that the search itself was illegal. The client had adduced evidence in the form of the affidavit of panchas which were subsequently found out to be forged in as many as five affidavits. A report of the forensic examination was also on record in respect of the same. Thus, the Board held that the matter needs to be referred for further enquiry to examine the role of the Respondent in the matter. Accordingly, the Board did not agree with the prima facie opinion of the Director (Discipline) that the Respondent is NOT GUILTY of Other Misconduct falling within the meaning of Clause (2) of Part-IV of First Schedule

to the Chartered Accountants Act, 1949 read with Section 22 of the said Act 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:

- 3.1 In the aforesaid case, the Board in its hearing dated 24th June, 2022 noted that the Respondent along with his son and his Counsel were present before it through video conferencing. However, neither the Complainant/their authorised representative was present before it nor was there any intimation as regards 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 his Counsel stated that they would like to have fresh proceedings. Thereafter, the Counsel for the Respondent made his detailed submissions before the Board.
- Upon consideration of the submissions and documents on record, the Board adjourned the hearing in the case with the direction to the Respondent to provide a copy of his consolidated written statement on the charges alleged against him. The Board also directed the office to share the copy of the written statement of the Respondent so received together with the Notes of hearing for the day with the Complainant Department to provide their comments thereon, if any.
- 3.2. In the next hearing held on 26th July, 2022 the Representative from the Complainant Department sought more time to make his submission and the same was granted by the Board.
- 3.3. The Board in its next hearing dated 26th September, 2022 noted that subsequent to the last hearing held in the case, the Complainant made his further submissions in the case vide letter dated 21st September 2022 which were rebutted by the Respondent vide his letter dated 24th September 2022. Thereafter, the Counsel for the Respondent made his further submissions before the Board. Subsequently, the representative from the Complainant Department also made his submissions before the Board.
- Upon consideration of the submissions and documents on record, the Board adjourned the hearing in the case with the direction to the Complainant Department to provide the copy of the Sworn Statement(s) dated 16th September 2022 as referred to in their submissions dated 21st September 2022 latest by 30th September 2022 with a copy to the Respondent. The Board also directed the office to summon Sh. G. Venkiteswaran, one of the partners of M/s Rajan Jewellers and Sh. T.V.Thomas and Sh. V.K. Sadhik, who signed the Panchnama on 9th April 2008 and whose Sworn Statement had been recorded by the Complainant Department on 16th September 2022, as a witness at the next date of hearing.
- 3.4. The Board in its hearing dated 29th November, 2022 noted that at the time of last hearing held in the case during the course of examination of the witness Shri Venkitesan Gopalanachary, the Counsel for the Respondent expressed his discomfort to continue in the hearing due to his ill health. Looking into the health issue of the Counsel of the Respondent, the Board adjourned the hearing in the case and scheduled the same for 29th November, 2022 wherein further examination of the witness(es) can take place. Thereafter, the Board permitted Shri Venkitesan Gopalanachary alongwith his Colleague's friend to be present as a witness before it through

video conferencing. The Counsel of the Respondent examined the witness. The Board also posed certain questions to the witness which were replied by him.

Thereafter, the Board adjourned the hearing in the case with the direction to the office to share a copy of the Notes of hearing held in the case with the Complainant Department duly containing the deposition of the witness and categorically inform them that a copy of the Notes of hearing held in the case on 23rd November, 2022 was also shared with them as there was no representation from their side before the Board. Thus, a final opportunity was given to them to substantiate their case.

- 3.5. The Board in its hearing dated 16th December, 2022 noted that at the time of last hearing held in the case on 29th November 2022, the deposition of witness no. 1 was taken and a final opportunity was provided to the Complainant Department to substantiate their case. Despite that, no representative of the Complainant Department was present before the Board.

Thereafter, the Board permitted Shri T. V. Thomas to be present as a witness before it through video conferencing. The witness no. 2 made his deposition before the Board. Since the Respondent did not wish to cross examine the witness(es) further, the Board discharged both the witness(es). Thereafter, the Counsel for the Respondent made his detailed oral submissions before the Board.

On consideration of the submissions and documents on record, the Board concluded the hearing in the case with the direction to the office to share a copy of the Notes of hearing held in the case with the Complainant Department duly containing the deposition of the witness to offer their comments thereon, if any within 5 days of the receipt of the same. Thereafter the Board at its meeting held on 3rd February 2023 noted that no comments of the Complainant Department had been received and accordingly on the basis of the documents and submissions on record decided on the conduct of the Respondent.

BRIEF SUBMISSIONS OF THE PARTIES:

- 4.1. The Respondent vide his Written Statement, inter-alia, submitted as under:
- 4.1.1 His role is limited to advice and affidavits or other evidences are supplied by the Client. Reliance is placed on such affidavits or evidences based on a reasonable appreciation of factors surrounding the same i.e. i) Required stamp paper ii) Proper format iii) Averments therein iv) Deponents name & signature and v) Attestation by Advocate, but not subjected further tests with forensics labs.
- 4.1.2. He has also submitted that his role is only to represent the client based on the material furnished, gathered and the law governing issue. Such materials are subjected to reasonable scrutiny and verification as to its content and authenticity.
- 4.1.3. The allegation that the assessee is "made" to file an affidavit is wrong and misconceived. He is, based on the sequence of events a narrated, and is only advice to file an affidavit to substantiate his contentions.
- 4.1.4 Reference is drawn to the provisions of section 21A(4) of the Chartered Accountants Act, 1949. It is clear that in case where the BoD does not agree with the opinion of Director (Discipline) that there is no prima facie case, the Board may advise the Director to further investigate the

matter. Hence, it is clear that the only option available with the Board is to advise the Director to further investigate the matter and that the Board cannot proceed with the hearing in the case or follow any other procedure.

- 4.1.5 Reference is drawn to the provisions of Rule 14(6) of the Rules. It is clear that ordinarily a hearing ought to be conducted within 45 days from the receipt of the Prima Facie Opinion of the Director. In this case, the date of receipt of the PFO was 13/04/2018 and the date within which the hearing ought to have been conducted was 28/05/2018 i.e. within 45 days from the date of receipt of PFO. However, the hearing was fixed by the Board only on 18/07/2019 which is 416 days beyond 28/05/2018.
- 4.1.6 This allegation is without any basis. To make this allegation, the complainant will have to bring on record all the affidavits filed in this country in Income Tax proceedings under search cases and which have been subjected to Forensic tests. It is submitted that this allegation is also baseless, derogatory, defamatory, malicious, vexatious and made with an ulterior motive.
- 4.1.7 A forensic test is questionable in a court of law. However, the said forensic tests does not in any way concern the Respondent as it has been done behind Respondent's back. It is surprising that the deponent or the Attesting Officer is not questioned in this regard. A counter affidavit from the deponent denying the averments or its authenticity is not filed either. As such the allegation is baseless, malicious, vexatious and made with an ulterior motive.
- 4.1.8 As submitted in response to complaint 4 above, to allege that "The fact that such forgery has happened only in those cases represented by a particular Chartered Accountant clearly point to his active involvement in the crime", the complainant will have to bring on record all the affidavits filed in this country in Income Tax proceedings under search cases subjected to forensic tests, without which the allegation is baseless, derogatory, defamatory and made with an ulterior motive. As stated above Respondent's advice to the client was based only on judicial pronouncements and settled laws on the subject based on which affidavits were sought to be filed. Reasonable reliance was placed on the affidavit which was signed and attested. The averments in the affidavit or the authenticity of the affidavit is always a subject matter of establishment by examination, cross examination or otherwise. The outcome in the process of establishment of the affidavit, would apply only to the matters averred, the parties named, the deponent and the attesting Officer. Respondent's role as a representative, is limited to presenting the facts established on such final outcome before judicial authorities on the strength of supporting case laws. Such representation, according to Respondent, would certainly not bring disrepute to the profession of Chartered Accountancy that falls under clause (2) of part IV of the first schedule.
- 4.1.9 Hearing before the Board of Discipline not held within the stipulated time Without any basis.

Reference is drawn to the provisions of Rule 14(6) of the Rules, which states as Under

"(6) The Presiding Officer of the Board of Discipline shall fix a date, hour and place of hearing, which shall not ordinarily be later than 45 days from the date of receipt of prima facie opinion and the Board of Discipline shall cause a notice to be sent of such date, hour and place to the Director, respondent and complainant and require them to appear before it in person to make oral submissions, if any."

From the above, it is clear that ordinarily a hearing ought to be conducted within 45 days from the receipt of the prima facie opinion of the Director. Although the Rule only states that the hearing 'ordinarily' ought to be conducted within 45 days, it would be pertinent to note that if a hearing is not so conducted, cogent reasons ought to be recorded for the same. In fact, the word 'ordinarily' implies that the hearing shall always be conducted within 45 days from the date of receipt of prima facie opinion unless there are adequate reasons for not doing so.

In the instant case, the date of receipt of prima facie opinion was 13.04.2018 the date within which the hearing ought to have been conducted was 28.05.2018, i.e. 45 days from the date of receipt of the prima facie opinion. However, a hearing was fixed by the Board only on 18.07.2019, which is 416 days beyond 28.05.2018 being the date within which the hearing ought to have been conducted. It is humbly submitted that a delay of 416 days is inordinate and unreasonable. Further, no reasons have been provided by the Board for the delay. In light of the facts and circumstances of the instant case, it is humbly submitted that the Board has violated Rule 14(6) of the Rules and therefore the entire proceedings stand vitiated.

- 4.2. The Complainant vide his Rejoinder submitted as under:
- 4.2.1 It was found that forged documents were filed by the Respondent on behalf of his clients in many cases. Affidavits filed in the name of Shri K I Suresh (Pancha in the case of Alleppy Financiers, searched in 1996), Shri T V Thomas and Shri Sadik (Pancha in the case of M/s Rajan Jewellery, searched in 2008), Sri Saju (Pancha in the case of Gracy babu, searched in 2009) were all found to be forged.
- 4.2.2 The case of M/s Rajan Jewellery represented by the Respondent is a partnership firm doing business in gold and silver ornaments. A search u/s 132 of the IT Act was conducted at the business of the assessee and residential premises of the partner on 9th April, 2008. Subsequently the order was passed on 31.12.2010 for the AY 2003-04 to 2009-10 raising substantial demand in all the years. The assessee filed an appeal in Hon'ble Kerala High Court and ITAT.
- 4.2.3. The assessee through the authorised representative challenged the assessment order claiming that the witnesses were not present during the course of search.
- 4.2.4. The ITAT had fully verified the facts. The tribunal rightly upheld the validity of search. In the meantime during the course of search of another case, it has been observed that fraudulent practice had been observed in almost all the cases represented by the Respondent. In all these cases an affidavit is filed purportedly in name of one of the witnesses of the search.
- 4.2.5. All these affidavits were sent to forensic examination and it was revealed that the signatures in the affidavits are forged.
- 4.2.6. It was the Respondent who represented M/s Rajan Jewellery before CIT(A). The forged affidavits were filed during appeal wilfully.
- 4.2.7. Statements were recorded on 16.9.2022 from the two witnesses Sri. T.V.Thomas and Sri.V.K.Sadhik u/s 131. In his statement, Sri.V.K.Sadhik stated that he was one of the witness to the search conducted by Income Tax Department at Rajan Jewellery on 9.4.2008 and as per his knowledge the search was done following due procedures and he had signed as witness in the panchanama along with the owner of Rajan Jewellery and Income Tax Authorities. He further stated that nobody had forced him or threatened him to sign the panchanama on 9.4.2008. Sri. Sadhik denied filing any affidavit before Income Tax Authorities and reiterated that he has signed the panchanama voluntarily without any threat or coercion.

- 4.2.8. Sri. T.V.Thomas in his statement, admitted that he was one of the witness to the search conducted by Income Tax Department at Rajan Jewellery on 9.4.2008 and the search was done after following following due procedures and he had signed as witness in the panchanama along with Sri.Mohan, owner of Rajan Jewellery and Income Tax Authorities. T.V.Thomas further stated that nobody had forced him or threatened him to sign the panchanama on 9.4.2008. Sri.T.V.Thomas stated that he has not filed any affidavit before Income Tax Authorities and reiterated that he has signed the Panchanama voluntarily without any threat or coercion.

OBSERVATIONS OF THE BOARD:

- 5.1. The Board noted that the Complainant has alleged filing of forged affidavits before income tax authorities with an objective to escape tax liability. The Complainant alleged that such fraudulent practice has been observed in the cases represented by the Respondent.
- 5.2 Before going on the merits of the case, the Board decided to consider the technical objections raised by the Respondent. The Respondent had raised an objection while referring to Section 21 A (4) of the Chartered Accountants Act, 1949 stating that where the BoD does not agree with the opinion of Director (Discipline) that there is no prima facie case, the Board may advise the Director to further investigate the matter. Hence, it is clear that the only option available with the Board is to advise the Director to further investigate the matter and that the Board cannot proceed with the hearing in the case or follow any other procedure. In this regard the Board was of the view that, the case of the Respondent in the present circumstances fall under Section 21 (3) of the Chartered Accountants Act, 1949 read with Rule 9 (3)(b) of Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The said provision refers to the matters wherein if the Director (Discipline) has arrived at the Prima Facie Opinion that the Respondent is Not Guilty under First Schedule or the Second Schedule. The Board of Discipline, if agrees, may call for closure of the matter. If the Board disagrees, it may proceed under Chapter IV or Chapter V, as the case may be or may advise the Director to further investigate the matter. After the further investigation in the matter, the case may proceed as per the provisions of Rule 9. However, Section 21 A (4) has to be read with Rule 5 (6) & (7) of Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Section 21A(4) specifically refers to cases wherein 'no prima facie' case has been made out by the Director (Discipline). Thereafter, if the Board agrees with the opinion of the Director (Discipline), it may close the matter or in case of disagreement, may advise the Director (Discipline) to further investigate the matter. Here, the words 'no prima facie' case is of prime importance. In the present matter, prima facie opinion was arrived at by the Director (Discipline) and the Respondent was held Not Guilty.

A difference may be drawn at this stage between the two provisions i.e. Section 21 A (4) has to be read with Rule 5 (6) & (7) of Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and Section 21 (3) of the Chartered Accountants Act, 1949 read with Rule 9 (3)(b) of Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. In the former case, the Director without going into merit of the case is of the view that 'there is no Prima Facie case and in the latter case, the Director after examination the case on its merit, has arrived at the Prima Facie Opinion holding the Respondent Not Guilty which was not agreed to by the BOD and the BOD decided to proceed under Chapter IV of Chartered Accountants

(Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. Therefore, the present matter has been considered in terms of the provisions of Section 21 (3) of the Chartered Accountants Act, 1949 read with Rule 9 (3)(b) of Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

- 5.3 The Respondent raised another objection with respect to non-compliance of the provisions of Rule 14(6) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. It is clear that ordinarily a hearing ought to be conducted within 45 days from the receipt of the Prima Facie Opinion of the Director. However, sometimes, it is not possible to conclude the proceedings in a particular case within such timelines which are recommendatory in nature due to extraneous factors. But, the said deviation cannot vitiate the proceedings in the case. The Board in this regard took into view the following observations of the Hon'ble Supreme Court of India in Appeal (civil) 6701 of 2005 in the matter of Uday Shankar Triyar vs Ram Kalewar Prasad Singh & Anr on 10 November, 2005 :

"17. Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. The well recognized exceptions to this principle are:-

- i) where the Statute prescribing the procedure, also prescribes specifically the consequence of non-compliance.*
- ii) where the procedural defect is not rectified, even after it is pointed out and due opportunity is given for rectifying it;*
- iii) where the non-compliance or violation is proved to be deliberate or mischievous.*
- iv) where the rectification of defect would affect the case on merits or will affect the jurisdiction of the court.*
- v) in case of Memorandum of Appeal, there is complete absence of authority and the appeal is presented without the knowledge, consent and authority of the appellant"*

- 5.4 As regard the charge alleged, the Board noted that the complaint pertains to filing of forged affidavits before income tax authorities with an objective to escape tax liability. Such fraudulent practice was observed in almost all the search cases represented by the Respondent. In all these cases, the assessee was made to file an affidavit purportedly in the name of one of the witness (sometimes both witnesses/ Panchas) of the search. In the said affidavit, it would be stated that the Panchas did not witness the search and the search took place without the presence of

Panchas. The fact that such affidavits were produced only in cases represented by the Respondent gave rise to suspicion.

All these affidavits were sent for forensic examination (along with genuine signatures of Panchas, available in Panchnama). In the forensic examination, it was revealed that signatures in the affidavit were forged. One such instance is the search in the case of M/s. Aleppey Financial Enterprises (searched in 1997). Report of the forensic lab stated that the signature in the affidavit was not put by the person who signed the Panchnama and other documents.

5.5 The Board noted that the Respondent in his defence brought on record certain documents and following details as provided therein are considered pertinent to the case:

<u>S.No.</u>	<u>Date</u>	<u>Event</u>
1.	09/04/2008	<p>Revenue search carried out: During the course of search, assessee did not keep any accounts for its business from 01-04-2008 to 09-04-2008. The search officials recorded a statement from the Managing partner of the firm Shri G. Venkatesan, he admitted that the assessee firm did not maintain accounts for the period from 01-04-2008 to 09-04-2008 and had also accepted the fact that the assessee has carried on transactions of purchase and sales outside the books of account. Accordingly, the AO after going through the books of accounts estimated the turnover of the assessee at 10 times of the declared turnover and estimated the GP thereon @ 20%.</p> <p>Accordingly, the assessing officer came to the conclusion and passed the assessment order on 31/12/2010 stating that the assessee is accounting for only 10% of its sales in its books of account. The AO took the view that the GP rate normally works out 20% in this kind of trade and the assessee has been declaring higher GP rate to make up the profit realized on suppression of sales. The AO held that the accounts maintained by the assessee are not reliable and accordingly rejected the same.</p>
2.	12/10/2012	<p>Order of Hon'ble CIT (A) vide Order dated 12/10/2012 wherein the assessee challenged the assessment orders of all the years by filing appeals before the Ld. CIT (A): The assessee claimed that the panchas were not present during the course of search and in support of the said claim he filed affidavits obtained from the panchas. Hon'ble CIT (A) vide Order dated 12/10/2012 observed that the new claim of non-presence of Panchas is not valid since the copies of panchnamas were duly signed by the Panchas and the copies thereof were given to the assessee during the search proceedings and the assessee did not raise any objection at that point of time or during the course of assessment proceedings. The Ld CIT(A) further observed that the assessee is raising this claim for the first time before him and it did not give any reason for not raising the same before the AO or the investigation wing. The Ld CIT(A) further held that the assessee is debarred from raising this issue in any further proceeding in view of the provisions of sec. 292-B and 292-BB of the Act.</p>
3.	24/05/2013	<p>Aggrieved by the Order of Hon'ble CIT (A), the parties appealed before the Ld. ITAT questioning the validity of the search</p>

		<p>proceeding and the non-presence of the Panchas during the search proceedings. The Hon'ble ITAT vide an order dated 24/05/2013 held that <i>"the assessee has urged this issue for the first time before the Ld CIT(A) after a gap of almost three years from the date of search. The assessee also participated in the assessment proceedings and the assessment was completed on 31.12.2010. Assessee filed appeals in the month of January, 2011 before Ld CIT(A), it urged the issue of validity of search proceedings due to non-presence of panchas. The assessee did not complain about the alleged non-presence of panchas either before the search party or before the assessing officer or before any other tax authority. In view of the considerable time gap, in our view, the retraction on the part of panchas cannot be considered as a valid retraction and accordingly, in our view, no credence could be given to the affidavits filed by them. Accordingly, in our view, the assessee is not entitled to challenge the validity of search on the strength of the affidavits given by the panchas at this stage and accordingly reject all the grounds relating to the same. The assessment order would become complete and effective, if it is issued, so as to be beyond the control of the authority concerned, for any possible change or modification therein, meaning thereby, the assessment order should leave the hands of the assessing officer. The impugned assessment orders were passed on 31.12.2010. The impugned assessment orders have become complete and effective on 31.12.2010 itself, in which case, they cannot be considered as barred by limitation. Accordingly, we reject the grounds raised by the assessee on this issue."</i></p>
4.	14/02/2019	<p>The assessee approached the Hon'ble Kerala High Court appealing on 7 grounds out of which two grounds are pertinent to the present case.</p> <p>Grounds No.1: Whether on the facts and in the circumstances of the case Income Tax Appellate Tribunal, after admitting that Appellate authorities are entitled to adjudicate the validity of the search, was justified, in not considering the issue, on the ground that the issue of validity of search proceedings, due to non presence of panchas, was not raised before the search party or before the Assessing Officer.</p> <p>Grounds No.3: Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal ought to have found that by virtue of the newly introduced section 153-A by Finance Act, without authority of law in view of the absence of the panchas.</p> <p>The Hon'ble High Court on adjudication of the said Grounds of challenge observed vide Order dated 14/02/2019 that <i>"The validity of the search is the most important issue insofar as examining the sustainability of an assessment order passed pursuant to a search under Section 132. the grounds of the</i></p>

	<p><i>absence of panchas were not taken at the first instance, the appeal is to be considered as a continuation of the proceedings as is provided under Section 131 and Section 255(6) of the Income Tax Act. The assessee had also produced the affidavits of the panchas specifically stating that they were not present at the time of the search. It is specifically pointed out that unless the absence of panchas which is the specific ground taken up, is raised at the first instance before the search party at the time of acknowledging the mahazar or at least before the Assessing Authority, it cannot be taken up later in first appeal. The assessee having not taken up the contention at the first stage and having taken up such a contention at the appellate stage for the first time indicates that the assessee had, by then, won over the panchas. If such contentions are allowed to be taken at a later stage in appeals provided under the statute, it would lead to chaos and no proceedings could be sustained since individuals retract at their sweet will. Having not raised the contention before the Assessing Officer we perfectly agree with the Standing Counsel that if it is permitted at the appellate stage, it could only lead to chaos. We do not think that any of the decisions cited help the assessee, since the question is a mixed one of facts and law. On facts we find that the question of presence of panchas cannot be questioned in appeal, unless it is first raised at least before the Assessing Officer. The non-presence of panchas raised for the first time before the First appellate authority after a period of three years from the search conducted, cannot at all be countenanced. The question of law raised at 4 is hence answered against the assessee and in favour of the revenue. There is absolutely no question of law arising from the estimation and we decline to answer the question raised as 5 and 6 being on facts and not on law. We also do not find any perversity in the determination of facts by the Tribunal. We also find that such a ground was not taken up before any of the appellate authorities. Hence we do not think that such a ground can be raised at the stage of appeal under Section 260A. We hence reject all the appeals, without any order as to costs."</i></p>
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5.6 The Board also noted the submission of the Respondent that his role was only to advise the clients and to represent them on the basis of affidavits or other evidence submitted by them. The Respondent clarified that reliance was placed by them on a reasonable appreciation of surrounding factors such as

- (i) required stamp paper,
- (ii) proper format,
- (iii) averments therein,
- (iv) deponent's name & signature and
- (v) attestation by advocate.

5.7 The Board also noted that the Income Tax Department, Kochi vide their letter dated 21st November, 2022 submitted as under:

- a) All these Affidavits were sent for forensic examination and it was revealed that signatures in the affidavit are forged and one such case is of M/s Rajan Jewellery, search conducted on 09/04/2008.
- b) Statement was recorded on Shri T.V. Thomas, one of the Panchas on 26/09/2022 wherein he had stated that he was one of the witness to the search conducted by the I.T. Department at Rajan Jewellery on 09/04/2008 and the search was done after following due procedures and he had signed as witness in the panchnama along with Shri Mohan, owner of Rajan Jewellery and Income Tax Authorities. He further stated that nobody had forced him or threatened him to sign the Panchnama. Further, he has not filed any affidavit before Income Tax Authorities.
- c) The documents were filed by the Authorised Representative (Respondent) and the onus to prove that the forged documents were given to him by the client lies on the Authorised Representative.

5.8 The Board observed that the Complainant Department in its letter dated 4th October, 2022 addressed to Shri G. Venkiteswaran, partner in M/s Rajan Jewellery provided as under:

"5. On verification of these Affidavits it was noticed that they were not properly dated and the contents were identical. These were sent for forensic examination and after comparing with the genuine signatures, it was established beyond doubt that the signatures in the affidavits submitted by you were forged.

6. From the above facts, it is clear that you have willfully attempted to make false statement by forging the signed affidavit filed before the Income Tax Authority and committed an offence punishable u/s 277 of the Income Tax Act."

5.9 The Board observed that the Respondent in his submissions referred to an affidavit dated 24/01/2011 of Shri G. Venkitesan, partner in Rajan Jewellery filed before the Commissioner of Income Tax (A), Cochin stating as under:

"It is submitted that the alleged Panchas were not present during the course of search, and the statement contained in para E, para 4,8 and 11 of the panchnama are totally false. The signature of the panchas was obtained only after the close of search and seizure after searching for them by the authorized officer and finding them.

The search was never made in the presence of the said witnesses as per section 132 (13) and section 132 (14) read with rule 112 (7) and no records were seized, in their presence."

Shri G. Venkitesan had approached the Commissioner of Income Tax (A) in ITA 26/2010-11 against the Assessment Order dated 31/12/2010. One of the Grounds of Appeal was that *"the order is null and void since the search was invalid as no panchas were present and the documents seized, and the statement recorded with the help of the police cannot even form part of the records."*

The Board also noted that the Complainant Department in his submissions referred to the Statements recorded on 16.9.2022 from the two witnesses Sri. T.V.Thomas and Sri.V.K.Sadhik

u/s 131 wherein they denied filing any affidavit before Income Tax Authorities. However, the copy of the same was not brought on record by the Complainant Department.

The Board further observed that the witness i.e. Shri G. Venkitesan, partner in Rajan Jewellery appeared before the Board on 29th November, 2022 and deposed as under:

- a) He had taken the Panchas to the Notary and before the Notary he has signed the affidavit along with the Panchas and later got it notarized.

5.10 The Board further observed that another witness i.e., Mr. Thomas, who was one of the Panchas also appeared before the Board on 16th December, 2022 and deposed as under:

- a) He confirmed that he has not seen the raid of Rajan Jewelers and was later on called at 6 PM as a witness because no other person was available there.
- b) He had signed the affidavit and Mr. Rajesh from the Department forcibly took a statement from him and threatened him.

5.11 In the present case, the fact of representing the clients has not been denied by the Respondent. However, from the records & evidences as brought on record, it is clear that the Respondent was in no way involved in procuring these Affidavits and his role was merely to file the said Affidavits before the IT Department on behalf of his client. The same has also been corroborated by the Witnesses in their deposition. The role of the Respondent was limited to represent the assessee based on the documents produced before him. There is no evidence on record which indicates the Respondent had any knowledge that the Affidavits were forged. 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 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 February 2023

प्रमाणित सत्य प्रतिलिपि / Certified true copy
मुकेश कुमार मिश्रा / Mukesh Kumar Mittal
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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