



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

[DISCIPLINARY COMMITTEE [BENCH-I (2023-2024)]]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

**ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949
READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF
INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT
OF CASES) RULES, 2007.**

In the matter of:

Shri V. Srivijay,

Dy. Director of Income Tax (Inv.)/ Unit III (3), Direct Tax Building, Visakhapatnam

-Vs-

CA. Joydeep Roy (M. No. 303146) of M/s. Joydeep Roy & Company, Chartered Accountant, Howrah

[PR/G/382/2017/DD/21/2018/DC/1433/2021]

MEMBERS PRESENT:

CA. Aniket Sunil Talati, Presiding Officer

Shri Prabhash Shankar, IRS (Retd.), (Government Nominee)

CA (Dr). Rajkumar Satyanarayan Adukia, Member – (Through Online Mode)

CA. Gyan Chandra Misra, Member- (Through Online Mode)

1. That vide findings dated 07-02-2023 under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was inter-alia of the opinion that **CA. Joydeep Roy (M. No. 303146)** (hereinafter referred to as the "**Respondent**") was **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.

2. That pursuant to the said findings, an action under Section 21B (3) of the Chartered Accountants Act, 1949 was contemplated against the Respondent and communication was addressed to him thereby granting an opportunity of being heard in person / through video conferencing to make a written & verbal representation before the Committee on 9th June 2023.

3. The Committee noted that on the date of hearing i.e., 09th June 2023, the Respondent was present through video conferencing from Kolkata Office. The Respondent confirmed receipt of findings of the Committee and made his verbal submissions on the same.



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4. The Committee considered the reasoning as contained in findings holding the Respondent Guilty of professional misconduct vis-à-vis written and verbal submissions of the Respondent as made before the Committee.

5. Keeping in view the facts and circumstances of the case, material on record including preliminary written submissions of the Respondent on the findings of the Committee as well as verbal submission, the Committee is of the view that the professional misconduct on the part of the Respondent is established, and the ends of justice would be met if reasonable punishment is awarded to the Respondent in this case. Accordingly, the Committee ordered that **the name of the Respondent be removed from the Register of Members for a period of 2 (Two) years and also to impose a fine of Rs. 25,000/- (Rupees Twenty-Five Thousand) upon CA. Joydeep Roy (M. No. 303146) to be paid within 90 days of receipt of the Order. The Committee also ordered that if the Respondent fails to pay the fine within the stipulated period as mentioned above, his name be removed from the Register of Members for an additional period of 1 (one) month.**

Sd/-
(CA. Aniket Sunil Talati)
PRESIDING OFFICER

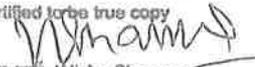
Sd/-
(Shri Prabhaskh Shankar, I.R.S. (RETD.))
GOVERNMENT NOMINEE

Sd/-
(CA (Dr). Rajkumar Satyanarayan Adukia)
MEMBER

Sd/-
(CA. Gyan Chandra Misra)
MEMBER

DATE: 27/07/2023
PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित /
Certified to be true copy


निसा शर्मा / Nisha Sharma
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनानुसंग निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
एन.ए.सी. भवन, मीनास नगर, शाहदरा, दिल्ली-110052
N.A.S.I. Bhawan, Minawas Nagar, Shahdara, Delhi-110052

DISCIPLINARY COMMITTEE [BENCH – I (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

Ref. No. PR/G-382/17-DD/21/18/DC/1433/2021

In the matter of:

Shri V. Srivijay,
The Deputy Director of Income Tax (INV),
UNIT III (3), Room No.512, 5th Floor,
Direct Tax Building,
Double Road, MVP Colony,
Visakhapatnam – 530 0017

.....Complainant

Versus

CA. Joydeep Roy (M.No.303146)
M/s Joydeep Roy & Company
Chartered Accountants
C/o Sri Sushil Roy Annapurna Bhawan
Balitikuri, Kalitala, Near Balak Sangha Club
HOWRAH – 711 113

.....Respondent

MEMBERS PRESENT:

CA. Aniket Sunil Talati, Presiding Officer
Shri. Jugal Kishore Mohapatra, IAS (Retd.), (Govt. Nominee), Member
Shri Prabhash Shankar, IRS (Retd) (Govt. Nominee), Member
CA. Priti Paras Savla, Member

DATE OF FINAL HEARING : 26.08.2022

PLACE OF FINAL HEARING : New Delhi

PARTIES PRESENT (Through VC):

Complainant - Shri V. Srivijay, DDIT (Inv.), Unit III, Visakhapatnam
(through VC)
Respondent - CA Joydeep Roy (Appeared from ICAI, Kolkata Office)
Counsel for the Respondent - Shri Prasenjit Burman, Advocate (Appeared from ICAI,
Kolkata Office)

BRIEF OF THE DISCIPLINARY PROCEEDINGS: -

1. On the day of hearing held on 26th August 2022, the Committee noted that the Complainant was present through VC. The Respondent along with his Counsel was also present through VC from ICAI Kolkata office. Thereafter, the hearing in the above matter continued from the stage as it was left in last hearing. The Counsel for the Respondent made his submissions on the charges. The Complainant also made his contentions on the charges. The Committee also posed questions to the Complainant and the Counsel for the Respondent as well. After hearing the submissions of both the parties, the Committee decided to conclude the hearing in the above matter.

2. In respect of previous hearing(s) held in the above matter, the Committee noted as under: -
 - i) In respect of hearing held on 15th June 2022, it is observed that the Complainant was present. The Respondent along with his Counsel was present. The Respondent was put on oath. Since the Respondent did not submit copy of authorization letter of his Counsel, the Committee directed the Respondent to send the copy of authorization letter through e-mail. Thereafter, the Respondent confirmed receipt of Prima Facie Opinion and on being enquired, the Respondent pleaded not guilty to the charges. On a request from the Counsel for the Respondent that they would like to make further submissions in the above matter, the Committee decided to adjourn the hearing and directed the Respondent to submit his written submissions within the next 10 days. With this, the hearing in the above matter was **partly heard & adjourned**.

 - ii) Thereafter, the hearing in the above matter was held on 5th July 2022 whereat the Complainant was present. The Respondent along with his Counsel was also present. When the Committee asked the Respondent to make his submissions in the matter, the Respondent stated that he has made his additional written submissions in the matter. The Complainant stated that he has not received copy of additional submissions from the Respondent, and that he also wants to make his reply/submissions on the same. Thereafter, the Committee directed the office to send the copy of additional submissions of the Respondent to the Complainant. With this, the hearing in the above matter was **partly heard & adjourned**.

3. Brief facts of the matter

A search and seizure action were conducted on the residential premises of Sri Vaddi Mahesh in Jessore Road, Kolkata, residential premises of his father, Sri Vaddi Srinivasa Rao at Srikakulam and the business premises of the companies floated by them on 09/05/2017. That during the search at the residential premises of Sri Vaddi Mahesh by the Department, his sworn statement was recorded under Section 132(4) of the Income Tax Act, 1961 wherein he categorically stated that the companies/ concerns floated by him, and his associates have not actually imported any sort of software from foreign companies. Further, it was noticed that the companies floated by Sri Vaddi Mahesh were remitting substantial amount of foreign exchange abroad ostensibly for import of customized software. The Complainant stated that the Respondent has certified Form '15CB' in respect of various companies.

4. CHARGE IN BRIEF AND FINDINGS OF THE DISCIPLINARY COMMITTEE: -

That Respondent has issued various certificates in Form 15CB which is necessary for making foreign remittances. Further, a statement of the Respondent on oath was recorded under Section 131 of Income Tax Act, 1961 on 13/11/2017 wherein he stated that he had issued the certificates in Form 15CB without verifying any supporting documents and has charged Rs.500/- per certificate. The Complainant has also submitted copy of various certificate in Form 15CB issued by the Respondent and the copy of the letters issued to bank.

The Complainant has also submitted a Statement on oath of Sri Vaddi Mahesh under Section 132(4) of the Income Tax Act, 1961 during the Income Tax search proceedings admitting that the import of software was not genuine. Hence, it is alleged that the Respondent has issued various certificates under Form 15CB without exercising due diligence thereby enabling Sri Vaddi Mahesh and his group concerns to siphon off valuable foreign exchange.

5. It is observed that the Respondent during the course of hearing and through his Written Submissions, made following submission in his defence:-

i) The Counsel for the Respondent stated that the entire disciplinary proceedings have been initiated at the instance of the Complainant and the Complainant relied upon the statement of

the Respondent recorded by the Complainant Department under Section 131(1A) of the Income Tax Act, 1961.

ii) The charge of not exercising due diligence has been made against him but the signatures on page C-132 to C-138 does not bear any resemblance with his signatures. IP address mentioned in Form No.15CB on pages nos. C-16 to C-128 needs to be verified about the location of the uploading place. The address mentioned in the form against the address of M/s. Joydeep Roy & Company is never registered with the ICAI.

iii) That Form at pages Nos.C-29 to C-130 belongs to another CA and the said form bear the same address as that of the Respondent. Income tax department or banks should have raised questions about the situation/address of two separate CA firms in same room.

iv) The Respondent also stated that in the initial FIR, his name was not included. As the investigation proceeded ahead, his name was subsequently included. Thereafter, the Income Tax Department recorded his statement and till date no charge sheet has been filed against him. The Counsel for the Respondent stated that the Respondent had already denied before the CID, Visakhapatnam that he did not issue 15 CB Forms. The Respondent's handwriting was collected by the CID and it was sent to the forensic lab for its examination. However, the Respondent did not have copy of the handwriting's expert report.

v) When the Committee asked the Respondent that he has not submitted any proof of forgery of his signature and any report / police complaint on IP address, the Respondent stated that he has not filed any FIR. The Respondent stated that when he was taken into custody by the CID, he came to know about the forgery done in his name and he made the same statement before the CID. In view of the statement given before CID, he thought that there is no need to file FIR separately.

vi) When the Committee enquired from the Respondent that whose DSC has been appended on 15CB, the Respondent stated that his signatures has been forged by one Mr. Partha Pratim Ghosh and he is liable for any misrepresentation. On next question as to how his signature came into the possession of Mr. Partha Pratim Ghosh, the Respondent stated that Mr. Partha Pratim Ghosh came to his office for certain professional work and hence, it was

not difficult for him to collect his letter head and his specimen signature etc.. The Respondent also stated that none of the forms have been uploaded from his IP address.

vii) When the Committee further asked from the Respondent as to how he can give his digital signature to unknown person, the Respondent stated that DSC may be forged. He has not allowed anyone to use his digital signature.

viii). The Counsel for the Respondent stated that the Complainant has no right to take statement on oath. When the person has no power under the law to record his evidence then how his statement can be relied upon.

ix). To a question as to whether the Respondent has filed any retraction with the Complainant Department, the Respondent replied negatively and stated that he had explained everything before the CID. To a further question as to how the Complainant Department could know about his objection / statement given to the CID, the Respondent did not give any reply to the same. He only stated that in absence of forensic report from CID, how he can file the police complaint for forgery of his signature and can say to the police that his signature has been misused.

6. The Committee observed that the Complainant made the following contentions to substantiate the allegation: -

i) The Complainant stated that the Complainant Department relied upon the statement of the Respondent recorded under Section 131(1A) of the Income Tax Act, 1961 wherein the Respondent admitted that he has signed Form 15 CB.

ii) The Complainant further stated that the Income Tax Authority is bound by the provisions of the Income Tax Act, 1961. Since the enactment of the Income Tax statute, Income Tax Authority has been vested with certain powers that are co-terminus with the power of the Court under the CPC. The Complainant is drawing the powers from the Income Tax Act, 1961 and Section 131 is a part of the Income Tax Act and it includes inter alia the powers to enforce attendance of any person and to examine him on oath and record the statement during the course of proceedings.

7. The Committee after perusal of the documents and submissions on record noted that it is a case where it is alleged by the Complainant that the Respondent failed to exercise due diligence while certifying 15CB and the same was admitted by the Respondent in his statement recorded under Section 131(1A) of the Income Tax Act, 1961 by the Complainant Department whereas the Respondent denied the allegation before the Disciplinary Committee and stated that his signature has been misused on Form 15 CB. He stated that he did not certify or sign any Form 15CB for making remittances and he has made the same statement before the CID. On perusal of the Forms 15CB on record, it is observed that all the Forms 15CB except one were digitally signed by the Respondent. It is observed that though the Respondent stated that his signature has been misused by Mr. Partha Pratim Ghosh and this fact has been informed to the CID yet he could not satisfactorily explain to the Committee as to how the digital signature has reached into the hand of Mr. Pratim Ghosh and why he has not filed any complaint with Police for misuse of his digital signature by Mr. Pratim Ghosh. Moreover, it is on record that the Respondent in his statement recorded by the Complainant under Section 131(1A) of the Income Tax Act, 1961 admitted as under:-

Q. 12. *How did you come to know of the company's name M/s. Lavender Esystem Private Limited and M/s. Wormwoods Technologies Private Limited.*

Ans. I came to know of these companies through one Sri Parthpratim Ghosh, a person who used to bring works related to my firm. He told me that the companies are located at Visakhapatnam and the charges for 15CB certification are expensive at Visakhapatnam. Hence, I accepted to sign them at the rate of Rs. 500 per 15CB certified.

Q. 13. *Please give the details of and also produce all the documents necessary for certifying in form 15 CB for foreign remittance for the company name M/s. Lavender Esystem Private Limited and M/s. Wormwoods Technologies Private Limited.*

Ans. Sri Parthipratim Ghosh used to show me one-page bills/ invoice of purchase of software. Based on this bill, I was signing the forms 15CB for both the companies. As per the Income Tax Act, 1961, in case of software, I was supposed to be personally available while the software is physically downloaded. I was supposed to check the invoice and the certificate by an engineer/ a chartered accountant certifying download of the software.

.....

Q 19. *Please state whether you have verified the actual download of customized software in your presence before issuing the certificates in Form 15 CB.*

Ans. No. I have not verified nor physically available the actual download of customized software in my presence before issuing the certificates in form 15CB.

Q 20. *As a chartered accountant your act of certifying the foreign remittance without verifying the details has been illegal. Please state whether you are aware of the consequences of doing such illegal activities.*

Ans. I accept that the act of certifying the foreign remittance without verifying the details is illegal. I am not aware of the consequences of this act.

Q. 21. Please state whether these bank accounts were current account or CC accounts.

Ans. I am not aware of the type of accounts of the companies. Sri Prathpratim Ghosh used to bring the filled forms 15 CB to me and the same were uploaded by me through digital uploading mode."

8. From the above facts, the Respondent appears to have signed Form 15CB without verifying the relevant documents. Moreover, the Respondent has not filed any retraction with the Complainant Department whereby withdrawing his admission. The aforesaid acts of the Respondent of non-filing of any police complaint and retraction statement clearly establish that the Respondent has digitally signed the Form 15CB and other documents without verifying relevant documents, for enabling the Company to remit valuable foreign currency outside India.

8.1 On perusal of Form 15CB brought on record by the Complainant, the Committee observed that the Respondent has issued total 57 certificates in Form 15 CB wherein he certified total foreign remittance of approximate Rs. 89 crores and no deduction of TDS was made from the amount remitted outside India. It is seen that the Respondent's digital signature was appended on Forms 15CB and he also accepted in his statement on oath u/s 131 of the Income Tax Act, 1961 that he issued the certificates in Form 15CB without verifying the actual downloading of the customized software.

8.2 In view of above, the defense taken by the Respondent that his signature has been misused is not acceptable at all and appears to be an afterthought act on the part of the Respondent. Accordingly, the Committee is of the view that the Respondent did not exercise due diligence while certifying Form 15CB and appears to have relied upon the information provided by Shri Pratha Pratim Ghosh without verifying the relevant documents and information. Hence, the Committee decided to hold the Respondent **Guilty** of professional misconduct falling within the meaning of Clauses (7) & (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Conclusion: -

9. Thus in the considered opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clauses (7) & (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.

Sd/-
(CA. ANIKET SUNIL TALATI)
PRESIDING OFFICER

Sd/-
(SHRI JUGAL KISHORE MOHAPATRA, I.A.S. (RETD.))
GOVERNMENT NOMINEE

Sd/-
(SHRI PRABHASH SHANKAR, I.R.S. (RETD.))
GOVERNMENT NOMINEE

Sd/-
(CA. PRITI PARAS SAVLA)
MEMBER

Date: 07/02/2023

प्रमाणित सत्य प्रतिलिपि / Certified true copy
मुकेश कुमार मिश्रा / Mukesh Kumar Mittal
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032