



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

[PR/48/2015/DD/88/2015/DC/759/2018]

**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.**

[PR/48/2015/DD/88/2015/DC/759/2018]

In the matter of:

Sh. T. Rajah Balaji,
Superintendent of Police
Central Bureau of Investigation,
Special Crime-III,
3rd Floor, CBI Head Quarter
C.G.O. Complex
Lodhi Road
New Delhi-110003

.....Complainant

Versus

CA. Sharwan Gupta... (M. No. 503126)
M/S M. S. Mahindroo & Associates (FRN No. 014458N)
Chartered Accountants,
H.I.G. No. 1430, Phase-IX
District Mohali,
Punjab

.....Respondent

Date of Meeting : 22nd March, 2023

Place of Order : ICAI, New Delhi

Party Present:

CA. Sharwan Gupta : Respondent (present in person)

MEMBERS PRESENT:

- (i) CA. Ranjeet Kumar Agarwal, Vice President, ICAI, Presiding Officer (in person)
- (ii) Shri Jiresh Nandan, IAS (Retd.), Government Nominee (in person)
- (iii) Ms. Dakshita Das, IRAS (Retd.), Government Nominee (in person)
- (iv) CA. Mangesh P Kinare, Council Member (thru video-conferencing)
- (v) CA. Cotha S Srinivas, Council Member (thru video-conferencing)

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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 11.02.2023, the Disciplinary Committee was inter-alia of the opinion that **CA. Sharwan Gupta (M. No. 503126)**, (hereinafter referred to as the **Respondent**) was **GUILTY** of professional misconduct falling within the meaning of item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
2. That an action under Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication dated 07th March 2023 was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee in its meeting on 22nd March, 2023.
3. On being asked by the Committee whether the Respondent had received the Findings of the Disciplinary Committee, the Respondent confirmed to have received the same. Thereafter, the Committee drew attention of the Respondent that the purpose of instant hearing was to afford him an opportunity of hearing before passing order for punishment in terms of Section 21B(3) of the Chartered Accountants (Amendment) Act, 2006 read with Rule 19(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
4. The charges levelled against the Respondent and decisions thereon are contained in the findings dated 11.02.2023 of the Committee arrived under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007; and the present Order under Section 21B(3) of the Chartered Accountant Act, 1949 be read along with the said findings dated 11.02.2023.

by

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5. The Committee noted that the Respondent was present physically at ICAI New Delhi and appeared before it. He submitted written submissions dated 16.03.2023 and inter-alia submitted as under:-

- (i) He qualified in Year 2004 and subject matter pertains to year 2006, wherein he had shifted to Mohali. He added that he has not having working papers in respect of certificates issued by him; in view of shifting of his office thrice between the period 2006 to 2015.
- (ii) The certificates were issued in 2006 and search was conducted by CBI in his office in 2011, after five years since the subject certificates were issued. The CBI officers were not looking for the working Notes / working papers of the Respondent during the search conducted in 2011. They wanted copies of vouchers, bills, bank statements etc. that he had examined for the purpose of issuing alleged certificates. Those documents were not in his custody ever.
- (iii) After three years since the CBI searched the premises of the Respondent, the CBI summoned the Respondent for a statement. In the meantime, eight years had lapsed since the contentious certificates were issued. Once the search was done in 2011, there was no follow up in the next two years. The Respondent never anticipated any further enquiry by any authority afterwards. Therefore, there was no case for the Respondent to retain his working papers of year 2006 till 2014.
- (iv) According to AAS 3, para 11, preservation of working papers should have been for a reasonable period. However, this reasonable time is a matter of judgment of a chartered accountant. The Respondent's failure to preserve the working papers, as expected by the Hon'ble Disciplinary Committee for as many as 15 years in this case, was just a matter of error of professional judgment. Therefore, it should not have been considered as a matter of not exercising due diligence or gross negligence. The Disciplinary Committee was very harsh on the Respondent.
- (v) CBI had never held Respondent guilty of criminal misconduct and CBI has mentioned in their report that the Respondent have issued utilization certificates purportedly based on



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books of accounts, vouchers etc. produced before him. CBI report also mentioned that during investigation, it could not be conclusively established that the Respondent was party to the criminal conspiracy to cheat Government of India based on forged and fraudulent documentation.

(vi) Therefore, it is prayed that non-retention of working papers may be pardoned, and viewed leniently.

6. The Committee considered the oral as well as written submissions made by the Respondent, facts of the case and various documents on record with the findings of the earlier Committee holding the Respondent guilty of professional misconduct.

7. The Committee noted that the charge against the Respondent was that he had issued 14 false Utilization Certificates in the name of 14 applicants for a professional fee of Rs. 20,000/- without any records to support such claim of utilization.

8. The Committee noted the oral and written submissions of the Respondent available on record and observed that the Respondent was not party to investigation of CBI and was also not party to any conspiracy in the commission of fraud. The Committee noted that no CBI official was present to substantiate their charges at the time of hearing. Further, the CBI report also mentioned that it could not be conclusively established that the Respondent was party to the criminal conspiracy. However, the Committee felt that the Respondent should have retained complete working papers in support of certificates issued by him which he failed to do. In view of the same, the Committee was of the view that it was an omission on the part of the Respondent which deserved to be viewed leniently for award of punishment.

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9. Accordingly, the Committee, looking into the gravity of the charges vis-à-vis submissions of the Respondent before it, was of the view that ends of justice would be met if minimum punishment is awarded to the Respondent in the instant case.

10. Thus, keeping in view the facts and circumstances of the case, material on record and submissions of the Respondent before it, the Committee ordered that the Respondent, viz. **CA. Sharwan Gupta (M. No. 503126)**, be **REPRIMANDED**.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

(SHRI JIWESH NANDAN, IAS RETD.)
GOVERNMENT NOMINEE

Sd/-

(MS. DAKSHITA DAS, IRAS RETD.)
GOVERNMENT NOMINEE

Sd/-

(CA. MANGESH P KINARE)
MEMBER

Sd/-

(CA. COTHA S SRINIVAS)
MEMBER

DATE: 19.04.2023

PLACE: NEW DELHI

प्रमाणित सत्य प्रतिलिपि / Certified true copy

[Signature]
सीए. सुनील कुमार / CA. Suneel Kumar
सहायक सचिव / Assistant Secretary
अनुशासनात्मक विभाग / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV(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. : [PR/ PR-48/15-DD/88/2015-DC/759/18]

In the matter of:

Sh. T. Rajah Balaji,
Superintendent of Police
Central Bureau of Investigation,
Special Crime-III,
3rd Floor, CBI Head Quarter
C.G.O. Complex
Lodhi Road
New Delhi-110003

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Versus

CA. Sharwan Gupta... (M. No. 503126)
M/S M. S. Mahindroo & Associates (FRN No. 014458N)
Chartered Accountants,
H.I.G. No. 1430, Phase-IX
District Mohali,
Punjab

.....Respondent

MEMBERS PRESENT:

- 1.CA. (Dr.) Debashis Mitra, Presiding Officer (Present in person)**
- 2. Mrs. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (Present in person)**
- 3. CA. Mangesh P Kinare, Member(Present through VC)**
- 4. CA. Sripriya Kumar, Member (Present in person)**

DATE OF FINAL HEARING : 07.01.2023

PLACE OF HEARING : New Delhi

PARTIES PRESENT :

Respondent : CA. Sharwan Gupta(through VC)

Counsel for the Respondent : CA. C.V. Sajan (through VC)





CHARGES IN BRIEF:-

1. The Committee noted that in the present case the Director (Discipline) in prima-facie opinion has held the Respondent Prima-facie Guilty of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

1.1 The charge against the Respondent is that the investigation conducted by the Central Bureau of Investigation disclosed that the Respondent had issued 14 false Utilization Certificates in the name of 14 applicants for a professional fee of Rs. 20,000/- without any records to support such claim of utilization.

BRIEF FACTS OF THE PROCEEDINGS:

2. On the day of the final hearing held on 07th January 2023, the Committee noted that the Respondent along-with his Counsel were present through Video Conferencing Mode for the hearing. The office apprised the Committee that the Complainant was not present and there was no intimation from him, however, notice of this meeting intimating date and time has been duly delivered at their end on 02/01/2023 as per speed post acknowledgement. Thereafter, the Respondent and his Counsel both gave declaration that there was nobody present except them in their respective rooms from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form.

2.1 The Committee noted that the matter was part-heard in year 2019 and Respondent was already on oath. The Committee noted that at its meeting held on 29/08/2019, the charges against the Respondent as given in para 1.1 above was already read out and the Respondent pleaded not guilty to the charge levelled against him. Accordingly, Committee asked the Counsel for the Respondent/Respondent to make his submissions on the merits of the matter. The Counsel for the Respondent made his submissions in the matter. The Committee thereafter examined him on the facts of the case. The Respondent and the Counsel for Respondent thereafter made their final submissions in the matter.

2.2 Based on the documents and information available on record and after considering the oral and written submissions made by the Counsel for the Respondent/Respondent, the Committee concluded hearing in the matter.

FINDINGS OF THE COMMITTEE

3. The Committee noted that the Respondent with regard to the above charge against him through his submission dated 10th December, 2015 had inter alia submitted as under: -
- i. The present case pertains to the year 2006 and in the year 2011, CBI officials searched the Respondent's office and residence on surprise basis and no paper related to the individuals and or their Concerns to whom the certificates were issued were found in the office in their search.
 - ii. At the time of issuing the subject certificates, the Respondent was new in the profession and was not exposed fully to judge the integrity level of the individuals.
 - iii. From 2006 to 2015, the Respondent has shifted his office to the 3rd place & to some extent locating of some of the documents has been difficult. Accordingly, the Respondent is not able to locate the papers connected with this case and he confirmed that all utilization certificates were issued based upon the factual information produced before him.
 - iv. No external information was sought from any of the parties whose bills were produced before him because there were no grounds for suspicion.
4. During the hearing, the Counsel for the Respondent submitted that audit documentation requirements of seven years as SA-230 has been wrongly relied upon by Director (Discipline) to make a case against the Respondent, as SA-230 had been come into force for the first time from 01/04/2009. The Respondent has been held guilty only for a limited issue that he was unable to present/preserve the working papers. It is an admitted fact that as the respondent he had changed his office frequently, he could not maintain the same.

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5. The Committee noted that one Mr. Sukhwinder Singh Cheema President of M/s Panchsheel Co-operative Collective Farming Society Ltd (PCCFS), Mohali in 2004 submitted 14 projects in National Medicinal Plants Board (NMPB) through State Medicinal Plant Board (SMPB), Punjab for sanction of grant / subsidy for cultivation of medicinal Plants in the names of 14 members of PCCFS. The said S.S. Cheema got prepared false and fabricated documents like land records, Memorandum of Understanding, Bank Appraisal Notes, Utilization Certificates etc., in the name of said 14 members of PCCFS and submitted the same to NMPB as annexure to the said 14 projects for grant in aid from NMPB. Thereafter, with the connivance of the officials of SMPB, Govt. of Punjab and NMPB, Deptt. of AYUSH, (Ministry of Health and Family Welfare, New Delhi) got sanctioned the projects for cultivation of medicinal plants and received the grant/ subsidy of Rs 86.23 lacs illegally from NMPB in two instalments. The above matter was investigated by CBI and an investigation report was submitted by it in the year 2014; and a formal complaint was filed with the Institute of Chartered Accountants of India on 02/03/2015.

6. Further, the Committee observed that in the CBI investigation report, the Respondent had been made as accused no. 16 in the said matter and the role ascribed to him underpara 20 of the Report, stated that,

"Investigation has disclosed that S.S. Cheema (A-1) approached Sh. Sharwan Gupta (A-16) a Chartered Accountant of Mohali for getting Utilization Certificates. Sh. Sharwan Gupta (A-16) on 31.08.2006 without inspecting any document, issued 14 Utilization Certificates in the names of 14 alleged applicant (A-2 to A-15) members of the society. It may be recalled that the entire enterprise, so conceived and executed by A-1 being a fraudulent enterprise and not borne out by any authentic factual data/ documents on record, there were simply no records from which Sharwan Gupta (A-16) could have seen/scrutinized before issuing the requisite 14 Utilization Certificates. He charged a fee of 20,000/- in cash from S.S. Cheema"

Further, at page no. 37 of the Investigation Report, CBI has mentioned that,
"There is evidence that Sh. Sharwan Gupta (A-16), Chartered Accountant, in connivance with S.S. Cheema (A-1) had prepared 14 Utilization Certificates in

the name of 14 applicants and handed over the same to S.S. Cheema (A-1) for a purported professional fee of Rs.20,000/-, even though there were no records to verify the claims as contained in the Certificates (D-18 to D-31) eventually issued by him. It is imperative to recall here that the entire enterprise, so conceived and executed by A-1 being a fraudulent enterprise were not borne out by any authentic factual data on record. There were simply no records from which Sharwan Gupta (A-16) could have seen/ scrutinized before issuing the requisite 14 Utilization Certificates". "Sharwan Gupta (A-16) has taken plea that the alleged 14 Utilization Certificate in the name of 14 applicants are issued by him, only after perusal of the books of account of the alleged 14 persons (A-2 to A-16) produced by A-1 S.S. Cheema (A-1)".

7. The Committee, while considering the documents on record and submissions of the parties, noted that that the role of the Respondent in the whole affair was that he had issued 14 Utilization Certificates to one Mr. Cheema and other persons associated with him. In this regard, upon perusal of documents on record, it is observed that the Respondent had certified utilization certificates dated 31st August, 2006 in Form GFR 19-A relating to 1st instalment of grant in aid received by the said persons from National Medicinal Plant Board for commercial cultivation. Besides Utilization certificate, the Respondent had also certified Receipts & Payment Accounts of the said accused persons for the period from 01st April, 2005 to 31st March, 2006.
8. The Committee noted that the Respondent in his written statement had admitted of having signed those alleged certificates and had enclosed a list of all those 14 individuals to whom those certificates were issued by him. The Committee noted that the Counsel for the respondent in his defence stated that the certificates were signed by the Respondent on production of all the required documents such as vouchers, books of accounts, bank passbooks etc. from one of the accused namely Mr. Sukhwinder Singh Cheema who visited the Respondent's office for the said purpose.

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9. The Committee further noted that the Counsel for the Respondent further submitted that in view of shifting of office thrice between the periods from 2006 to 2015, the Respondent was not having any document connected with this case. Upon perusal of statement dated 21st March, 2014 recorded by Mr. P.K. Tanwar, Inspector of Police, CBI, the Respondent had stated that he had issued those certificates on verification of all the required documents. The contents of his statement is as under:-

"Presently, I am not having any document related to Sh. Sukhwinder Singh Cheema, as after 2006, he is not my client. In that condition I am unable to recall whether Mr. Cheema brought his document folder from my office or the same was destroyed by me at the time of twice shifting of my office".

10. Further, in view of CBI report and submissions of the Counsel for the Respondent that there was no malafide established against the Respondent, the Committee was of the opinion that in this matter, the Respondent had acted negligently while issuing the alleged certificates, as he failed to bring on record any evidence/ documents such as working papers; based upon which he had issued said certificates. Further, it is also noted fact that, CBI during its raid to the office and residence in 2011 of the Respondent, had not been able to recover any supportive document with regard to those certificates issued by him. These corroborated circumstantial evidences prove that the impugned certificates were issued by the Respondent without verifying the documents which consequently indicates lack of due diligence on the part of the Respondent.

11. Moreover, the Committee noted the contention of Counsel for the Respondent that SA-230 "Audit Documentation" which prescribed the retention period as minimum seven years had been wrongly applied by the Director (Discipline) in this case and consequently, held the Respondent prima facie Guilty of professional misconduct, as this SA-230 was made applicable for audit period on or after April 01, 2009. Further, it is observed by the Committee that the Certificates were issued during the period 2005-06 and para 14 of AAS – 3 read as: *"The auditor should adopt reasonable procedures for custody and*

confidentiality of his working papers and should retain them for a period of time sufficient to meet the needs of his practice and satisfy any pertinent legal or professional requirements of record retention”.

12. The Committee noted that a professional is expected to be connected with the assignment/matter performed by him and satisfy the professional requirements of record retention for reasonable length of time by adopting necessary procedures. In the instant matter, the CBI investigation into the fraud commenced in the year 2011 which was within the reasonable time gap from the date of issuance of the impugned certificates by the Respondent. The Committee noted that no defense/plea has been given by the Respondent as to what reasonable procedures he had adopted with regard to retention of working papers for a period of sufficient time, as per the requirements of AAs – 3 and compliance thereof, and therefore, he had failed to substantiate that the certificates issued by him was based on his verification of relevant records. The Committee further noted that the certification assignment undertaken by Respondent pertained to a Government body which involved public interest; and therefore the Respondent should have been more careful in issuance of 14 certificates, based upon which 14 members of PCCFS inter alia received the grant/subsidy to the tune of Rs. 86.23 lacs illegally, and therefore he should have retained the working papers considering the significance and responsibility of the assignments.

12.1 In addition to the requirements of SA-230, and of AAS-3, 'Documentation', a professional was required to document matters which are important in providing evidence that the assignment was carried out in accordance with the basic principles. The duties of a professional while performing an assignment included maintenance of working papers and document for a reasonable length of time. But here despite knowing the fact that the case is being investigated by CBI, it is incomprehensible as to how and why the Respondent chose not to retain his working papers. In view of the above, it is very clear that the Respondent was required to maintain the working papers; whereas in the particular matter, when the Respondent was asked to provide working papers, so as to show whether he had followed the necessary check while

carrying out the certification assignment, and he informed that he was not in possession of working papers any more in view of shifting of his office thrice between the period from 2006 to 2015.

12.2 The Committee noted that no obvious explanation for non-retention of working papers was given by the Respondent; and the submission of Respondent in this regard was unconvincing and appears to be merely an afterthought to save himself from the disciplinary proceedings. In view of the same, the Committee, keeping in view the magnitude of fraud which had taken place and the seriousness of the indictment of the Respondent, opined that the Respondent cannot be vindicated of the charges because of his conspicuous role in issuance of the certificates and therefore the Respondent be held guilty for lack of due diligence.

CONCLUSION

13. In view of the above observations, considering the submissions of the Respondent, and documents on record, the Committee held the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

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Sd/-
(CA. (Dr.) DEBASHIS MITRA)
PRESIDING OFFICER

Sd/-
(SMT. DAKSHITA DAS, IRAS (RETD.)
GOVERNMENT NOMINEE

Sd/-
(CA. MANGESH P KINARE)
MEMBER

Sd/-
(CA. SRIPRIYA KUMAR)
MEMBER

DATE : 11.02.2023

PLACE : NEW DELHI

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सी.ए. सुनील कुमार / CA. Suneel Kumar
सहायक सचिव / Assistant Secretary
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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