

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

Shri Nagendra Prasad, Superintendent of Police, Kolkata

-vs-

CA. Umesh Kumar Dokania, Kolkata

PR-243/2013-DD/240/2013/BOD/217/2016

CORAM:

**CA. G. Sekar, Presiding Officer
Shri R.K. Tewari (Government Nominee)
CA. Dhinal Ashvinbhai Shah, Member**

In the matter of:

**Shri Nagendra Prasad,
I/C, Superintendent of Police,
CBI-ACB,
Central Bureau of Investigation,
Anti-Corruption Branch, 2nd MSO Building
14th and 15th Floor, 234/4, AJC Bose Road
KOLKATA – 700 020**

.....Complainant

Versus

**CA. Umesh Kumar Dokania (M. No. 053656)
Opp. B M & Sons
NSB Road
Distt. Burdwan
RANIGANJ – 713 347**

.....Respondent

DATE OF HEARING: 19.04.2018

PLACE OF HEARING: KOLKATA

PARTIES PRESENT:

Complainant : Shri Ashutosh Kumar, Sub-Inspector, Authorised representative from Complainant Department (CBI)
Respondent : CA. Umesh Kumar Dokania
Counsel for Respondent : Shri K.N. Gupta, Advocate

Findings:

1. The Board noted that the charge on which the Respondent has been held prima facie guilty is that the Respondent was involved in creating false documents showing gifts of various amounts of money by various persons in the name of Shri Debtosh Banerjee and his wife Smt. Mamta Banerjee.
2. The Board heard the submissions made by the representative from the Complainant Department and Counsel of the Respondent and duly considered the submissions/documents available on record.
3. The Counsel of the Respondent at the first instance made a submission that the Respondent has been found prima facie guilty of Clause (2) of Part IV of First Schedule. A bare reading of the said clause shows that at first, there has to be an opinion of the 'Council' that the aforesaid act on the part of the Respondent brought disrepute to the profession or the Institute. In this regard, he stated that the said clause reads as under;

PART IV : Other misconduct in relation to members of the Institute generally A member of the Institute, whether in practice or not, shall be deemed to be guilty of other misconduct, if he

(1) xxxx xxxx xxxx

(2) in the opinion of the Council, brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work.

4. In this regard, it may be noted that the Chartered Accountants Act was amended in the year 2006. While amending the provisions of the Act, especially related to the Disciplinary mechanism of the Institute, all the powers vested with the Council in the pre-amended Act, has been vested in Director (Discipline), Board of Discipline and Disciplinary Committee as the case may be. As per the present scheme, the prima facie opinion is formed by Director (Discipline) and in turn placed before Board of Discipline or Disciplinary Committee as the case may be for its approval. Whereas, the Board of Discipline consists of Presiding Officer, a member of the Council and a nominee of Central Government, the Disciplinary Committee consists of a Presiding officer, two members of the Council and two nominees appointed by the Central Government. Further, the Central government

has also notified Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 laying down the manner to deal with the complaints/ information so received by the Disciplinary Directorate.

5. Further, the Board also notes that on earlier several occasions the misconduct of other Respondents under this clause was considered by the Board in terms of provisions of Section 22 of the Chartered Accountants Act, 1949 which reads as under”

22. Professional or other misconduct defined For the purposes of this Act, the expression “professional or other misconduct” shall be deemed to include any act or omission provided in any of the Schedules, but nothing in this Section shall be construed to limit or abridge in any way the power conferred or duty cast on the Director (Discipline) under sub-section (1) of Section 21 to inquire into the conduct of any member of the Institute under any other circumstances

6. In view of the above the Board decided to overrule the submission made by the Counsel of the Respondent.
7. The Board observed that the Respondent on 01.07.2009 deposed before Inspector of Police that he had done some declarations on gifts given by some persons whose income tax files are maintained by him. He further deposed that receiving party is not known to him and gifts were made on paper. He further admitted in the deposition that he got cut money or commission @ 8% of total dealing.
8. The Board also noted that Shri Amit Kumar Dokania, S/o. Shri Om Prakash Dokania who was one of the employees of the Respondent, had deposed on 20.06.2009 before Inspector of Police that declaration of some gifts were signed by him in the name of donor on the direction of the Respondent. The Board observed that the Respondent with his documents dated 12th March, 2016 had submitted copy of Affidavit dated 7th April, 2016 from Amit Kumar Dokania wherein the latter had retracted his earlier statement given on 20.06.2009 to inspector of Police. The Board finds that there was a substantial time gap of years between the original and the retraction statement given by Mr. Amit Kumar

Dokania and hence no cognizance of such retraction as the retraction can be taken under law.

9. The Board thus based on facts/evidence on record as also the submission before it was of the view that the Respondent has not been able to present any documents that would prove his genuineness or absolve him in totality of the allegations made out against him and on which he has been held prima-facie guilty. The deposition clearly depicts that his acts bring disrepute to the profession.

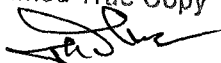
CONCLUSION:

10. Thus, the Board concluded that the Respondent is held **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.

Sd/-	Sd/-	Sd/-
(G. SEKAR)	(R K TEWARI)	(DHINAL ASHVINBHAI SHAH)
PRESIDING OFFICER	GOVERNMENT NOMINEE	MEMBER

DATE: 19.04.2018

PLACE: Kolkata

Certified True Copy

Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate
The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002



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

**ORDER UNDER SECTION 21 A(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949
READ WITH RULE 15(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF
INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF
CASES) RULES, 2007.**

Shri Nagendra Prasad, I/C, Supriintendent of Police, CBI-ACB, KolkataComplainant

-Vs-

CA. Umesh Kumar Dukania (M.No.053656), Raniganj

.....Respondent

[PR-243/2013-DD/240/2013/BOD/217/2016]

MEMBERS PRESENT:

CA. G. Sekar, Presiding Officer

Shri R. K. Tewari, Government Nominee

CA. Dhinal Ashvinbhai Shah, Member

1. That vide Report dated **19th April, 2018**, the Board of Discipline was of the opinion that **CA. Umesh Kumar Dukania** is guilty of Other Misconduct falling within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

2. That an action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Umesh Kumar Dukania** and communication dated 18th January, 2019 was addressed to him thereby granting him an opportunity of being heard in person and/or to make written representation before the Board on 2nd February, 2019.

3. That **CA. Umesh Kumar Dukania** appeared personally before the Board and made his oral submissions. He also submitted his written submission vide his e-mail dated 27th January, 2019.

4. The Board has carefully gone through the facts of the case and also the oral and written submissions of **CA. Umesh Kumar Dukania** that he had neither signed nor certified nor audited the financial statements. He further submitted that his name was used by one of his employee and the matter relates to F.Y. 2000-01.

5. As per the findings of the Board as contained in its report, it has already been conclusively proved that **CA. Umesh Kumar Dukania** is guilty of Other Misconduct falling

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

within the meaning of Clause (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with Section 22 of the said Act.

6. Upon consideration of the facts of the case, the consequent misconduct of the Respondent, and keeping in view his oral and written submissions before it, the Board was of the view that since matter is very old and looking into the totality of the circumstances and overall conduct of **CA. Umesh Kumar Dukania** the ends of justice shall be met if reasonable punishment is awarded to the Respondent.

8. Accordingly, the Board decided to impose a fine of Rs. 50,000/- (Rupees Fifty Thousand (inclusive of GST)) upon him, which shall be payable by him within a period of 60 days from the receipt of the Order.

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Sd/-
CA. G. SEKAR
(PRESIDING OFFICER)

Sd/-
SHRI R.K. TEWARI
(GOVERNMENT NOMINEE)

Sd/-
CA. DHINAL ASHVINBHAI SHAH
(MEMBER)

DATED: 2ND FEBRUARY, 2019

PLACE: NEW DELHI

Certified True Copy

Mukesh Kumar Mittal

Mukesh Kumar Mittal
Assistant Secretary
Disciplinary Directorate

The Institute of Chartered Accountants of India
ICAI Bhawan, I.P. Marg, New Delhi-110 002