

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – IV (2023-2024)]

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

Findings under Rule 18(17) and Order under Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No.: [PR-205/2018-DD/224/2018/DC/1240/2019]

In the matter of:

Shri Inder Pal Rajara,

House No. G-490,

Sushant Lok-2,

Sector 57

GURUGRAM 122011(HARYANA)

.....Complainant

Versus

CA. Shankar Solanki (Mem. No: 527206)

M/s. Shankar Solanki & Associates, (FRN. 025827N)

1252, LGF,

Sector 46,

GURUGRAM 122001 (HARYANA)

.....Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)

Shri Jiwesh Nandan, I.A.S. (Retd.), Government Nominee (In person)

Ms. Dakshita Das, I.R.A.S. (Retd.), Government Nominee (In person)

CA. Mangesh P Kinare, Member (Through Video Conferencing mode)

CA. Cotha S Srinivas, Member (In person)

DATE OF FINAL HEARING : 11th July, 2023

PARTIES PRESENT

Complainant : Mr. Inder Pal Rajara (Through VC Mode)

Respondent : CA. Shankar Solanki (Through VC Mode)

Counsel for Respondent : CA Princy Singhal (Through VC Mode)

1. Background of the Case:

In the instant case the Committee noted that the Complainant has alleged that for the past four years, he had availed the services of the Respondent for the purpose of filing income tax returns. As a matter of practice, for the F.Y. 2014-2015 as well, all the documents required for preparing return were submitted to Respondent while username and password were within the knowledge of the Respondent. The Complainant signed ITR acknowledgement for financial year 2014-15 and power of attorney in favour of the Respondent due to full faith on the Respondent and thereafter left for USA. Thereafter, on 25th May, 2017, an e-mail was received by the Complainant from Income Tax Department which was shared by him with the Respondent for his inputs and explanation and it was informed by the Respondent that receipt of notice is normal practice and he started suggesting ulterior means which the Complainant refused to accept as the same were absurd.

2. Charges in brief: -

2.1 The Only charge against the Respondent is that the Complainant has alleged in the extant case that the Respondent failed to reconcile the transactions which were clearly reflecting in the account statements and to consider the true income based upon the remittances acknowledged within the account statement provided and thus filed an inadequate return which turned misleading.

3. The relevant issues discussed in the prima facie opinion dated 26th June, 2019 formulated by Director (Discipline) in the matter, in brief, are given below:

3.1 The Complainant filed complaint dated 23rd June, 2018 against the Respondent after receipt of the notices and demand from the Income Tax Department due to undisclosed income whereas the Respondent has submitted that the return was filed on the basis of documents received from the Complainant on 19th March 2016. The Complainant while raising the allegation has nowhere been able to pinpoint any negligence on part of the Respondent in handling the data or documents provided by him for the purpose of filing ITR. The demand has arisen due to mismatch in the export sales as disclosed by the Complainant to the Respondent vis-a-vis the

declaration before the custom authorities. Raising contentions/allegations after receipt of notices from Tax Department and not at the time of signing/finalising draft ITR, reflects the disgruntled attitude of the Complainant whereby he had attempted to falsely implicate the Respondent.

3.2 The Director (Discipline) in prima facie opinion dated 26th June 2019 had held the Respondent prima facie **NOT GUILTY** of professional misconduct falling within the meaning of Clause (7) of Part I to Second Schedule to the Chartered Accountants Act, 1949. The said Clause to the Schedule to the Act, states as under:

Clause (7) of Part I of Second Schedule:

"A member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he—

(7) does not exercise due diligence or is grossly negligent in the conduct of his professional duties."

3.3 The Board of Discipline considered the prima facie opinion dated 26th June 2019 of the Director (Discipline) along with the Complaint, Written Statement, Rejoinder, and additional documents on record. The Board in respect of charge of failure to reconcile the transactions which were clearly reflected in the account statements, the Board, while disagreeing with the view of Director (Discipline), was of the view that *"the Respondent while filing the ITR of the Complainant failed to reconcile the sales figure reflecting in ITR vis-a-vis disclosed to CBEC and that there was a significant difference between the two."* Accordingly, the Board held the Respondent GUILTY of Professional Misconduct falling within the meaning of Clause (7) of Part-I of Second Schedule and decided to refer the matter to Disciplinary Committee for further enquiry in the matter under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

W
3

4. Date(s) of written submissions/pleadings by parties:

The relevant details of filing of documents in the instant case by the parties are given below:

S.No.	Particulars	Dated
1.	Complaint in Form 'I' filed by the Complainant	23 rd June, 2018
2.	Written Statement filed by the Respondent	24 th September, 2018
3.	Rejoinder	17 th October, 2018
4.	Additional Documents	22 nd November, 2018
5.	Prima facie Opinion by Director (Discipline)	26 th June, 2019
6.	Consideration of Prima facie Opinion by Board of Discipline	25 th November, 2019
7.	Further Submissions by the Complainant before the Committee	06 th June, 2023
8.	Further Written Submissions by the Respondent before the Committee	20 th June, 2023

5. Brief facts of the Proceedings:

5.1 The details of the hearing fixed and held/adjourned in said mater is given as under:

Particulars	Date of Meeting	Status
1 st time	02 nd May, 2023	Part heard and adjourned
2 nd time	20 th June, 2023	Part heard and adjourned
3 rd time	11 th July, 2023	Hearing concluded & decision taken

5.2. On the hearing held on 02nd May 2023 At the outset, the Committee noted that the Respondent was present in person before it through video conferencing mode for the hearing. Thereafter, the Respondent gave a declaration that there was nobody present except him in the respective room from where he was appearing and he would neither record nor store the proceedings of the Committee in any form. Being first hearing of the case, the Respondent was put on oath. Thereafter, the Committee

h/

enquired from the Respondent as to whether he was aware of the charges and charges against the Respondent were read out. On the same the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him. The office apprised the Committee that the Complainant was not present and notice of listing of the case has been served upon him. In the absence of the Complainant, the Committee decided to adjourn the matter to a future date, to provide one more opportunity to the Complainant to substantiate the charges. With this, the case was part heard and adjourned.

5.3. On the Hearing held on 20th June 2023, the Respondent along with the Counsel were present through Video Conferencing Mode for the hearing. Thereafter, they gave declaration that there was nobody present except them in the respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form. The office apprised the Committee that the Complainant was not present and notice of listing of the case has been served upon them. He vide-mail dated 10th June 2023 has expressed his inability to attend the meeting due to his ill health. Further, he has submitted copy of Judgement of State Consumer Dispute Redressal Commission dated 11th November 2022 wherein, the Respondent has been directed to pay Rs. 6.42 lakhs imposed by the Income Tax Department. Said commission had held the Respondent responsible as it was duty of the Respondent to prepare and file ITR on behalf of Complainant as per information provided by him. It was submitted that the Respondent has filed a revision petition before National Consumer Dispute Redressal Commission and the above Order of District and State Consumer Commission has been stayed. Thereafter, the Committee noted that the case was part heard and Respondent was already on oath. The Committee asked the Counsel for the Respondent to make his submissions in the matter. In this respect, the Respondent stated that he has to recall/collect the information/documents in this regard as it was an old matter. In view of the above request of the Respondent, the Committee adjourned the matter to next date and directed the Respondent to file his submissions on subject matter within next 7 days of this meeting. With this, the case was part heard and adjourned.

2

5.4. On the day of final hearing dated 11th July 2023, the Committee noted that the Respondent alongwith his Counsel CA. Princy Singhal was present through video conferencing mode. The Committee further noted that the Complainant was present through Video Conferencing mode. Thereafter, both parties gave a declaration that there was nobody present except them in the respective room from where they were appearing and that they would neither record nor store the proceedings of the Committee in any form.

5.5. The Complainant appeared for the first time in the case and he was put on Oath. The Committee asked the Complainant to make his submissions in the matter. The Complainant reiterated his Complaint and submitted that the Respondent had filed his Income Tax Return for Assessment Year 2015-2016 without his knowledge and at that time he was out of India. The Respondent presented his line of defence by submitting his various oral and written submissions before it. Based on the documents and information available on record and after considering the oral and written submissions made by the Complainant and the Respondent, the Committee concluded hearing in the matter in the instant case.

6. Findings of the Committee

6.1. The Committee noted the background of the case as given hereunder: -

6.2. The Complainant in his Complaint has stated that for the past four years, he had availed the services of the Respondent i.e CA. Shankar Solanki for the purpose of filing income tax returns. Username and password were within the knowledge of the Respondent. Complainant signed ITR acknowledgement for financial year 2014-15 and power of attorney in favour of the Respondent due to full faith in the Respondent and thereafter left for USA. Thereafter, on 25th May, 2017, an e-mail was received by the Complainant from Income Tax Department which was shared by him with the Respondent for his inputs and explanation and it was informed by the Respondent that receipt of notice is normal practice and he started suggesting ulterior means which the Complainant refused to accept as the same were absurd.

h/

we

6.3. The Director (Discipline) while holding the Respondent not guilty on the charge observed that the Complainant filed complaint dated 23rd June, 2018 against the Respondent after receipt of the notices and demand from the Income Tax Department due to undisclosed income whereas the Respondent has submitted that the return was filed on the basis of documents received from the Complainant on 19th March 2016. The Complainant, while raising the said allegation has nowhere been able to pinpoint any negligence on part of the Respondent in handling the data or documents provided by him for the purpose of filing ITR. It is viewed that the demand has arisen due to a mismatch in the export sales as disclosed by the Complainant to the Respondent vis-a-vis the declaration before the custom authorities. Thus, raising contentions/allegations after receipt of notices from Tax Department and not at the time of signing/finalising draft ITR, reflects upon the disgruntled attitude of the Complainant whereby he had attempted to falsely implicate the Respondent. However, in light of the facts mentioned above, no misconduct on the part of the Respondent is evident by the Director(discipline) at the Prima Facie Stage.

6.4. Thereafter, the Board of Discipline while considering the present case did not concur with the reasoning of Director (Discipline) in respect of the charge related to failure to reconcile the transactions which were clearly reflected in the account statements, The Board of Discipline, while disagreeing with the view of Director (Discipline), was of the opinion that the Respondent while filing the ITR of the Complainant failed to reconcile the sales figure reflecting in ITR vis-a-vis disclosed to CBEC and that there was a significant difference between the two documents/certificate. Accordingly, the Board held the Respondent GUILTY of Professional Misconduct falling within the meaning of Clause (7) of Part-I of Second Schedule.

6.5. The Committee noted that the Respondent with regard to issuance of alleged certificate to CBEC had submitted that the certificate dated 02/03/2017 was issued by him on the basis of documents/ records produced by the Complainant, who told that the said certificate was required to submit to custom officials/ department for claiming duty drawback. Therefore, the said certificate was issued on the request of the Complainant for the purpose of filing the same with the custom department and not for the purpose of filing ITR. The Respondent further submitted before the

Committee that the complainant has already used this certificate for claiming duty drawback based on shipping bills for export cleared via customs. He added that that the Complainant produced the original export shipping bill for verification and after verification by him, the said certificate was issued by the Respondent.

6.6. In respect of Income Tax Return of the Complainant the Committee noted that the Respondent submitted before the Committee that he has made computation of Income Tax of the Complainant and same was sent to the Complainant vide e-mail dated 19th March 2016 and after receiving confirmation over phone, he had filed the ITR of the Complainant.

6.7. The Committee categorically asked the Complainant during the hearing, whether he has digitally signed the ITR and or has physically signed it. The Complainant stated that he did not recall of signing the physical copy of Income Tax Return, as the case pertains to F.Y. 2015-16. The Committee in this respect was of the view that the copy of acknowledgement of the Income tax return was mandatorily to be signed by the Assessee and was mandatorily required to be sent to CPC Bangalore within 120 days of filing the e-return. Further, the Committee asked the Respondent to clarify the difference in turnover shown in the certificate dated 02nd March 2017 issued by him and income shown in ITR. The Respondent submitted that at the time of filing of ITR, the details/figures for turnover of export sales was not provided to him by the Complainant. The Respondent further submitted that on 02/03/2017, the export turnover certificate for the Financial Years 2013-14 to 2015-16 was issued on the basis of records produced by the Complainant for the purpose of claiming duty drawback.

6.8. The Committee further noted that in view of Order dated 31st May 2018 of Commissioner Income Tax (Appeals), the Complainant had taken the plea that he received information regarding sales of goods in next financial year i.e. 2015-2016 and accounted for sale in next financial year.

6.9. The Committee noted that particular charge against the Respondent was that he failed to reconcile the transactions which were clearly reflected in the account statements, and observed that the Respondent has sent an e-mail dated 19th March,

W

2016 to the Complainant attaching the computation of total Income based on the documents provided to him by the Complainant and nothing was placed on record to show that any disagreement was shown by the Complainant with regard to the same and the return was filed with the Income Tax Department on 19th March, 2016.

6.10. Thereafter the case of the Complainant was selected for scrutiny by the Income Tax Department under CASS on account of mismatch of turnover disclosed by the Complainant in his ITR vis-a-vis income disclosed to CBEC and was further taken for assessment u/s 143(3) of Income Tax Act, 1961. The Complainant, thereafter, in a reply to the notice of Income Tax Department disclosed all sales invoices provided to the Respondent besides other documents of shipment and exports and himself attended and discussed based on the material available on record as Representative after that the Respondent had surrendered power of attorney on 12th December 2017 which has been mentioned in the Assessment Order as well.

6.11. The Committee noted that The Assessing Officer has observed that the assessee i.e. the Complainant had received receipts of Rs 68,12,820/- on account of export sales as was evident from export/import summary data from CBEC during the year, whereas in computation of Income, the assessee had merely shown receipt of Rs 17,20,530/- due to which receipts of Rs 50,92,290/- was not included in total sales.

6.12. The Committee noted that the Respondent in his submissions with regards to receipts of Rs 50,92,290/- had added that the said Income was shown in the next financial year by the assessee as in the next year the complainant provided the details of said Income and accordingly a return was filed after noting all the above facts and submissions of the parties. Accordingly, the Committee was of the opinion that no income tax return is validated/ authenticated unless and until same is not signed physically or digitally. Hence the version/plea of the Complainant that alleged ITR was filed without his knowledge is totally a baseless fact.

6.13. Further, this complaint filed by the Complainant is an afterthought to save his skin as same is filed after receiving the demand notice(s) dated 08th February 2018, 11th June 2018 and 16th March 2018. The Complainant even kept silent and even he filed ITR for next financial year i.e. 2015-16 and not raised said issue/discrepancy

before the ICAI. In view of this, the Committee decided that the Respondent, viz. CA. Shankar Solanki be absolved of the charge levelled at para 2.1 above against him.

7. Conclusion

In view of the above findings stated in above paras, vis-a-vis material on record, the Committee gives its charge wise findings as under:

Charges (as per PFO)	Findings	Decision of the Committee
Para 2.1 as given above	Paras 6.5 to 6.13 as given above	Not Guilty- Clause (7) of Part I of Second Schedule

8. In view of the above observations, considering the submissions of both parties and documents on record, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Clause (7) Part – I of Second Schedule to the Chartered Accountants Act, 1949.

9. Order

Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes an Order for closure of this case against the Respondent.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

(SHRI JIWESH NANDAN, I.A.S. {RETD.})
GOVERNMENT NOMINEE

Sd/-

(MS. DAKSHITA DAS, I.R.A.S.{RETD.})
GOVERNMENT NOMINEE

Sd/-

(CA. MANGESH P KINARE)
MEMBER

Sd/-

(CA. COTHA S SRINIVAS)
MEMBER

DATE : 10/01/2024

PLACE: New Delhi

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

Nisha Sharma

निशा शर्मा / Nisha Sharma
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer

अनुशासनालयक निदेशालय / Disciplinary Directorate

Shankar Solanki, Gurugram (M.No. 122001)

The Institute of Chartered Accountants of India

आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032

ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

Shri Inder Pal Rajara, Gurugram -vs- CA.Shankar Solanki, Gurugram (M.No. 122001)