

CONFIDENTIAL

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

[Constituted under Section 21B of the Chartered Accountants (Amendment) 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/223/2016/DD/108/INF/2016/DC/1015/2019]

In the matter of:

CA. Govind Gupta (M.No.510748), Delhi in Re:
H.No. 69, Vijay Block,
Laxmi Nagar,
Delhi – 110092

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (In person)
Shri Jiwesh Nandan, Govt. Nominee (In person)
Ms. Dakshita Das, Govt. Nominee (Through VC mode)
CA. Mangesh P Kinare (In person)
CA. Cotha S Srinivas, Member (In person)

DATE OF FINAL HEARING : 20.06.2023

PARTY PRESENT

Respondent : CA. Govind Gupta (In person)

1. Background of the case:

The Respondent Firm had issued 15CA and 15CB certificates for M/s. Saina International (hereinafter referred to as the 'Entity') Proprietor, Mr. Saurabh Sharma having Current Account No. 60217060536 with Informants Bank i.e. Bank

by CA

of Maharashtra, Lawrence Road Branch, New Delhi for making Advance Import Payment to Hong Kong and China. The Respondent firm confirmed that they have issued 104 Form 15CA/15CB certificates to the entity, Proprietor Mr. Saurabh Sharma. After the Bank of Baroda Scam, the Proprietor, Mr. Saurabh Sharma, was not traceable and no bill of entry had been submitted to the Informant Bank for the Advance Import Payment transactions done through the account of the Entity. The Bank has allowed Advance Import Payment to the Entity on the basis of 15CA/15CB certificates issued by the Respondent. On visiting the Respondent Firm for the whereabouts of Mr. Saurabh Sharma, the officials of the Bank informed that they do not have any details of him. The Respondent had issued 15CA/15CB certificates without verifying the credentials of the Entity and its Proprietor, Mr. Saurabh Sharma.

2. Charges in Brief: -

2.1 Respondent had issued 104 certificates in Form 15CA/15CB in favour of M/s Saina International without verifying the credentials of the Entity. The Informant Bank has informed that the Proprietor of the Entity, Mr. Saurabh Sharma having current account with the Informant Bank had submitted these certificates to the Bank for Advance Import Payment to Hong Kong and China. However, the said proprietor of the Entity is not traceable and no bill of entry had been submitted to the Bank for the Advance Import Payment transactions done through the account of the Entity. Thus, the Respondent had acted negligently in issuing the said certificates.

3. The relevant issues in the Prima Facie Opinion dated 04th August 2018 formulated by Director (Discipline) in the matter in brief is given below:-

3.1. The Respondent had issued some certificates in Form 15CB bearing dates as 28th July, 2015; 30th July, 2015; 31st July, 2015; 2nd August, 2015, 3rd August, 2015, 6th August 2015, 10th August 2015, 11th August 2015, 12th August 2015, 13th August 2015, 14th August 2015 and 17th August 2015 respectively to the Entity to the tune of Rs.31.25 crores. In terms of the provisions of Rule 37BB of Income Tax Act, 1961 a person responsible for making a payment to a non-resident or to a foreign company has to provide a certificate in Form 15CB from an accountant certifying the nature

V/G

of remittance and the rate of TDS applicable on such remittance after examination of the relevant documents, along with various other details.

3.2. Upon perusal of Form 15CB, it is noted that the Respondent had certified as under:

"We have examined the agreement dated 23rd July 2015 between M/s. SAINA INTERNATIONAL (remitters) and M/s. RDG TRADING CO. LIMITED (beneficiary) requiring the below remittance as well as the relevant documents and books of account required for ascertaining the nature of remittance and for determining the rate of deduction of tax at source as per provisions of Chapter – XVII-B."

3.3. Thus, it is observed that the Respondent was required to verify the nature of remittance and the rate of TDS applicable on such remittance. However, the Respondent has not submitted his written statement so as to bring on record any documentary evidence justifying the basis on which certificates were issued by him.

3.4. Further, the fact that the Proprietor of the Entity is not traceable or had not submitted required documents to the Informant Bank also merits consideration in this regard. Thus, the matter needs to be probed into further, to examine whether due care and caution was exercised by the Respondent while issuing the said certificates. It also needs to be emphasized that the conduct of the Respondent in avoiding to receive the 'Information' letter seeking his written statement and thus consequent non submission of his written statement, is condemnable and violative of Item (2) of Part III of the First Schedule to the Chartered Accountants Act, 1949.

3.5. The Director (Discipline) in his Prima Facie Opinion dated 04th August 2018 has held that the Respondent is prima facie GUILTY of professional misconduct falling within the meaning of Item (2) of Part III of the First Schedule and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949. The said Item to the Schedule to the Act, states as under:

S. Cook

Item (2) of Part III of First Schedule:

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

does not supply the information called for, or does not comply with the requirements asked for, by the Institute, Council or any of its Committees, Director (Discipline), Board of Discipline, Disciplinary Committee, Quality Review Board or the Appellate Authority;

Item (7) of Part I of Second Schedule:

A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he –

does not exercise due diligence, or is grossly negligent in the conduct of his professional duties;

- 3.6. The Prima Facie Opinion formed by Director (Discipline) was considered by the Disciplinary Committee at its meeting held on 15th January 2019. The Committee on consideration of the same, concurred with the reasons given against the charge and thus, agreed with the prima facie opinion of the Director (Discipline) that the Respondent is prima facie **GUILTY** of Professional Misconduct falling within the meaning of Item (2) of Part – III of the First Schedule and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and accordingly, decided to proceed further under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The Committee also directed the Directorate that in terms of the provisions of sub-rule (2) of Rule 18, the prima facie opinion formed by the Director (Discipline) be sent to the Respondent including particulars or documents relied upon by the Director (Discipline), if any, during the course of formation of prima facie opinion and the Respondent be asked to submit his Written Statement in terms of the provisions of the aforesaid Rules, 2007.

4. Date(s) of Written submissions/pleadings:

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

By CA

S.No.	Particulars	Dated
1.	Date of Information Letter	20 th June 2016
2.	Written Statement filed by the Respondent	-----
3.	Prima facie Opinion by Director (Discipline)	4 th August 2018
4.	Written Submissions by the Respondent after PFO	14 th March 2019 and 20 th June 2023

5. Further Submissions of the Respondent: -

The Respondent has further submitted that:-

- 5.1.** The Respondent vide his written submissions dated 14.03.2019 submitted that he has verified online information as well as physical documents of credentials of the Entity (M/s Saina International) and its proprietor, Mr. Saurabh Sharma before issuing the 15CA/15CB certificate. The Respondent submitted that Mr. Saurabh Sharma submitted various documents (Annexure 1 to 10) before issuing the certificate of 15CA/15CB. Respondent visited the office of Mr. Saurabh Sharma, Proprietor of M/s Saina International. The address of the entity from where the business was operational was H. No. 132, Ground floor, Rampura, Delhi-110035.
- 5.2.** The Respondent added that Mr. D Chaterjee (Chief Manager, Bank of Maharashtra, Delhi Zone) and Mr. Fateh Singh, Preet Vihar, Bank of Maharashtra, Delhi) came to the office of Respondent on 04.01.2015 and discussed the details of Form 15CA/CB certified by him and directed the Respondent to send the registered office address and email id of Mr. Saurabh Sharma to the Bank of Maharashtra. On the said directions, Respondent has sent the office address and email id of Mr. Saurabh Sharma to the Bank. Respondent further stated that, at the time of the said discussion, no further documents of M/s Saina International were required by the said two officers of the Bank and further no correspondence was made by the Bank of Maharashtra with the Respondent and further no staff of Bank has visited the Respondent.

S. Con

6. Brief facts of the Proceedings:

6.1. The details of the hearing(s) fixed and held/adjourned in said matter is given as under:

Particulars	Date of Meeting(s)	Status
1 st time	22 nd May 2023	Part heard and Adjourned
2 nd time	20 th June 2023	Hearing concluded and decision taken

6.2. On the day of first hearing on 22nd May 2023. The Respondent was present physically and being first hearing of the case, the Respondent was put on oath. Thereafter, the Committee enquired from the Respondent as to whether he was aware of the charges and then the charges against the Respondent were read out. On the same the Respondent replied that he is aware about the charges but pleaded 'Not Guilty' on the charges levelled against him. Thereafter, as per Rule 18 (9) of the Chartered Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee adjourned the case to a later date and the matter was part heard and adjourned.

6.3. Thereafter, on the day of second hearing on 20th June 2023, the Respondent in person was present and appeared before it. The Committee asked the Respondent to make his submissions on the merits of the matter. The Respondent submitted that someone claiming himself to be official of the Bank of Maharashtra had visited his office earlier and asked for certain information of auditee, which he refused to share as said person failed to establish his identity being the official of Bank of Maharashtra. Further, he submitted that he had verified online information as well as physical documents of credentials of the entity and its proprietor before issuing certificates. He submitted that he had seen and verified the details of ITRs, IC code, KYC of the proprietor. He also mentioned that he had visited the place of the proprietor from where he was conducting/operating the business and where books of accounts were kept. The Respondent also submitted that the physical documents regarding performa invoice, copy of agreement dated 23.07.2015 between M/s. Saina International (remitters) and M/s. RDG Trading Co. Ltd. (beneficiary) and

other documents are kept in his office. However, his office premises has been locked and sealed by the landlord Mr. M.D. Joshi because of the dispute between him and Mr. M.D. Joshi (landlord of his office premise) which is pending before the Hon'ble Karkarduma Court. Consequently, the Respondent has been unable to have access to his office premise where official records are kept. After recording the submissions of the Respondent and papers/documents available on record, the hearing in the matter was concluded.

7. Findings of the Committee

The Committee noted the background of the case and gave its findings as under:

- 7.1. The Committee also noted the submissions of the Respondent that before certifying Form 15CA/15CB, he had visited the office premises of M/s Saina International (Proprietor, Mr. Saurabh Sharma) where the books of accounts were maintained and verified the agreement and performa invoice for both the firms i.e. (M/s Saina International (remitters) and M/s RDG Trading Company Limited (beneficiary)).
- 7.2. The Committee noted that the Respondent in his further submissions dated 20.06.2023 has stated that Informant Bank had sent its officer(s) to the office of Respondent without proper authority letter/power of attorney to visit the premises for enquiry of Mr. Saurabh Sharma, Proprietor of M/s Saina International and to collect the details of Form 15CA/15CB and related documents of M/s Saina International. The Informant Bank has given wrong details regarding the name of entity i.e. M/s Nexus International in the letter dated 20th June 2016, and that the Respondent had not issued certificate in Form 15CA/15CB for the firm, M/s Nexus International.
- 7.3. The Committee observed that as per the provisions of Rule 37BB of Income Tax Act, 1961, a person responsible for making payment to a non-resident or to a foreign company has to provide a certificate in Form 15CB from an accountant certifying the nature of remittance and the rate of TDS applicable on such remittance after examination of the relevant documents.

S. Govind

7.4. The Committee observed that the Respondent has certified in Form 15CB, the relevant portion of which is given as under:

"We have examined the agreement dated 23rd July 2015 between M/s. SAINA INTERNATIONAL (remitters) and M/s. RDG TRADING CO. LIMITED (beneficiary) requiring the below remittance as well as the relevant documents and books of account required for ascertaining the nature of remittance and for determining the rate of deduction of tax at source as per provisions of Chapter – XVII-B."

7.5. The Committee observed that the Respondent has submitted that he had verified the following documents while certifying Form 15CA/15CB of M/s Saina International which were not produced earlier: -

- a. Details of Pan Card of Mr. Saurabh Sharma (Proprietor of M/s Saina International)
- b. Pan Card details of Mr. Saurabh Sharma as per Form 26AS of Income Tax Department.
- c. Details of TDS deducted for Mr. Saurabh Sharma from Assessment Year 2015-16
- d. Bank details of Mr. Saurabh Sharma for AY 2015-2016
- e. Profile of Mr. Saurabh Sharma
- f. Details of Import and Export Code of M/s Saina International
- g. Aadhar Number of Mr. Saurabh Sharma
- h. TIN of M/s Saina International
- i. Dealer Credentials (Dealer name, address, registration date, return frequency)

7.6. The Committee noted that the Respondent could not produce certain documents before the Committee having regard to the fact that there is a dispute going on between Respondent and his landlord of office premises and the relevant documents related to the subject case are housed in the disputed office premises of Respondent which is locked/sealed. However, Respondent has produced the
by CoA

documents as given in para 6.6 above which reflect the fact that the Respondent has examined the documents as stated above and performed the assignment and has taken due care and diligence while certifying Form 15CA/15CB.

- 7.7. The Committee observed that it could be seen that the Respondent while certifying Form 15CA/CB has examined an agreement dated 23.07.2015 between M/s Saina International (remitters) and RDG Trading Company Ltd (beneficiary) requiring the remittance of relevant documents, books of accounts for ascertaining the nature of remittance and determining the rate of tax deduction at source.
- 7.8. The Committee was of view that the Respondent had visited the place of Mr. Saurabh Sharma Proprietor of M/s Saina International and had verified the relevant documents, but he was unable to produce certain documentary evidence before the Committee because of the dispute pending in Karkarduma Court in relation to his office premises which had been sealed. The Committee further noted that Respondent has submitted the details of Pan card, profile of Mr. Saurabh Sharma, details of import/export code and bank details and dealer credentials of M/s Saina International and copies of Income tax return of Mr. Saurabh Sharma which were relied upon by the Committee.
- 7.9. In view of the above, the Committee was of the opinion that production of relevant documents and details by Respondent as stated above established the fact that the Respondent had verified the credentials of M/s Saina International and of its proprietor Mr. Saurabh Sharma while certifying Form 15CA/CB. The Committee felt that the subsequent development relating to wrongful act, if any, on the part of Mr. Saurabh Sharma would not make the Respondent responsible; as due diligence was undertaken by Respondent at time of certification of Form 15CA/CB which was a specific certification assignment and was completed upon issuance of Form 15CA/CB . The Committee was of the view that the Respondent cannot be held responsible for impropriety if any committed by the client on a later date, for which there was no evidence corroborating the involvement of Respondent therein. Accordingly, the Committee decided that the Respondent be held **NOT GUILTY** of Professional Misconduct.



8. Conclusion

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

Charge(s) as per PFO	Findings	Decision of the Committee
Para 2.1 as above	Para 7.1 to 7.9 as above	Not Guilty - Item (2) of Part III of the First Schedule and Item (7) of Part I of the Second Schedule

9. In view of the above observations, considering the submissions of the Respondent and documents on record, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (2) of Part III of the First Schedule and Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Order

10. 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.

h

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 :05.02.2024
PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy
Charan Singh
Charan Singh / Charan Singh
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
भारतीय रजिस्ट्रार संस्थान
The Institute Chartered Accountants of India
आईसीएआई भवन, विश्वास नगर, शाहदरा, दिल्ली-110032
ICAI Bhowan, Vishwas Nagar, Shahdra, Delhi-110032