



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

[PPR/P/87/15/DD/68/INF/2015/BOD/314/2017]

ORDER UNDER SECTION 21A(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

In the matter of :-

CA. P. Musalaiah (M. No. 023675),

C-26-108,

Jaya Nagar Colony,

Kadapa – 516002.

in Re:

.....Respondent

[PPR/P/87/15/DD/68/INF/2015/BOD/314/2017]

MEMBERS PRESENT (in person):

CA. Rajendra Kumar P, Presiding Officer

Ms. Dolly Chakrabarty (IAAS, reted.), Government Nominee

Date of hearing and passing Order: 15<sup>th</sup> June 2023

1. The Board of Discipline vide Findings dated 10<sup>th</sup> February 2023 was of the view that CA. P. Musalaiah (M. No. 023675) is GUILTY of 'Other Misconduct' falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. P. Musalaiah and communication dated 25<sup>th</sup> May 2023 was addressed to him thereby granting him an opportunity of being heard on 15<sup>th</sup> June 2023 which was exercised by him by being present in person. He confirmed receipt of the Findings of the Board. He also requested the Board to take a sympathetic view in the case keeping in view his age and the fact that he has not done any offence in the profession or elsewhere.
3. Thus, upon consideration of the facts of the case, the consequent misconduct of CA. P. Musalaiah (M. No. 023675) and keeping in view his representation before it, the Board, decided to remove the name of CA. P. Musalaiah (M. No.023675) from the Register of Members for a period of 01 (One) month.

Sd/-

CA. Rajendra Kumar P  
(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty (IAAS, reted.)  
(Government Nominee)

सही प्रतिलिपि होने के लिए प्रमाणित  
Certified to be true copy

बिना नाथ तिवारी / Bishwa Nath Tiwari  
कार्यकारी अधिकारी / Executive Officer  
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 Bhowan, Vishwas Nagar, Shahdra, Delhi-110032

CONFIDENTIAL

**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**

**File No. : [PPR/P/87/15/DD/68/INF/2015/BOD/314/2017]**

**CORAM (Present in person):**

CA. Prasanna Kumar D., Presiding Officer  
Ms. Dolly Chakrabarty (IAAS, Retd.), Government Nominee  
CA. (Dr.) Raj Chawla, Member

**In the matter of:**

CA. P. Musalaiah (M. No. 023675) in Re:

Respondent

DATE OF FINAL HEARING : 02<sup>nd</sup> June, 2022

PLACE OF FINAL HEARING : New Delhi / through video conferencing

**PARTIES PRESENT( through video conferencing):**

Counsel for the Respondent : CA. C.V. Sajan

Witness : Shri Shaik Abdul Fazululla – Retired Deputy

Commissioner of Income Tax

**FINDINGS:**

**BACKGROUND OF THE CASE:**

1.1 Shri Shaik Abdul Fazululla, while working as Deputy Commissioner of Income Tax, Circle 2(1), Office of the Commissioner of Income Tax, Tirupati, did scrutiny assessment of the Income Tax returns referred to him by the competent authority of Income Tax Department to assess or re-assess the income of the Assessee and to find out if any income is suppressed to evade Tax. The Respondent was looking after Income Tax related matters of Dr. Kandluri Upendra Kumar (hereinafter referred to as Dr. Kandluri). Investigation revealed that Dr. Kandluri had filed separate Income Tax returns in his individual capacity and in the capacity as the Karta of Upendra Kumar Kandluri Hindu Undivided Family (HUF), at Kadapa, AP (PAN-AEMPK5784R) and the PAN of HUF-AAIHK6741A.

1.2 Dr. Kandluri filed Income Tax return for his HUF account with PAN-AAIHK6741A, for the Assessment Year 2012-13, in which he declared that he had paid a sum of Rs. 2,36,545/- by

- way of TDS and Rs. 35,980/- as self assessment tax, on the income of Rs. 13,53,779/- for the Assessment Year 2012-13. In the said return, he had declared income under the Head capital gain, as "Rs. 0". The Income Tax Return of HUF account of Dr. Kandluri for the Assessment Year 2012-13 was selected by CASS (Computer Aided Scrutiny Selection), for Assessment Scrutiny, with the reasons recorded as "Non corporate Assessee having no business-large deductions claimed under Sections 54B, 54C, 54D, 54G, 54GA", as against the column-"the reasons for scrutiny selection". Accordingly, a Notice u/s 143(2) was issued to Dr. Kandluri, on 11.08.2013 by Shri T.L.S. Reddy, ITO, Ward II, Kadapa, and the same was served on 19.08.2013. Dr. Kandluri was required to produce on 11.9.2013, any documents/accounts and any other evidence in support of his IT return. It was revealed to the Income Tax Department, Hyderabad, that the assessee Dr. Kandluri, claimed and availed exemption from Income Tax, for capital gain for purchase of a commercial property during the Assessment Year 2010-11 for which he was not eligible. Therefore, the Commissioner of Income Tax, Tirupati, issued an Order u/s 127 of Income Tax Act, 1961, notifying the case of PAN:-AAIHK6741A, Dr. Kandluri for transfer from ITO, Ward 2, Kadapa to DCIT, Circle 2(1), Tirupati, vide proceedings No. 127/CIT/TPT/2013-14 dated 1.5.2013, for better co-ordinated investigation/assessment. The scrutiny assessment for PAN:-AAIHK6741A of Dr. Kandluri was transferred to Shri Shaik Abdul Fazululla, Dy. Commissioner of Income Tax, Circle 2(1), Tirupati (hereinafter referred to as 'Shri Fazululla') and the same was received by him on 12.11.2013, for further scrutiny.
- 1.3 On 28.4.2014, Shri Fazululla issued Notices u/s 143(2) and 142(1) of IT Act, 1961 and a letter calling for information, such as, Return of Income for the Assessment Year 2012-13, Profit and Loss account copy, Balance Sheet schedules Tax Audit Report etc., and the presence of the assessee or his authorized representative on 15.5.2014. On 25.6.2014, the Respondent attended before Shri Fazululla as the authorized representative of Dr. Kandluri and submitted copy of Return of Income, copy of sale property document dated 5.12.2011, copy of house purchase document dated 16.1.2011, bank statements of Vijaya Bank, Kotak Bank, Bangalore. Shri Fazululla recorded in the Order sheet on 25.6.2014, that he called for the details and evidences for the improvements made to the house and adjourned the case to 3.7.2014.
  - 1.4 Shri Fazululla's and the Respondent mobile nos. were placed under surveillance by CBI, Chennai and intercepted the conversation of these persons.
  - 1.5 On 3.7.2014, the Respondent did not attend the hearing at Tirupati as scheduled, but he spoke to Shri Fazululla over the mobile phone during which Shri Fazululla suggested the Respondent to submit a letter as if the latter is producing the documents as required by Shri Fazululla. During this conversation, Shri Fazululla raised various queries in the documents produced by the Respondent on behalf of Dr. Kandluri. By pointing out the said queries, Shri Fazululla demanded an illegal gratification of Rs. 5 lakhs from Dr. Kandluri, through the Respondent to settle the Assessment Scrutiny and to issue a favourable Assessment Order. On 6.7.14, Dr. Kandluri informed the Respondent over phone that he arranged the demanded bribe and insisted the Respondent to get the Orders of Assessment immediately from Shri Fazululla, as he is paying money to him.
  - 1.6 Based on the Information regarding demand of bribe by Shri Fazululla and the arrangement made by Dr. Kandluri for payment of bribe amount through the Respondent, a regular case was registered on 7.7.2014 by Superintendent of Police, CBI : ACB: Chennai, in RCMA1 2014 A 0027, u/s 120 B IPC r/w Section 7, 12, 13(2) r/w 13(1) (d) of P.C. ACT, 1988, against Shri Fazululla, the Respondent and Dr. Kandluri. During the course of investigation, a team conducted a surprise check at the office of Shri Fazululla, when he demanded and accepted the bribe amount of Rs. 3 lakhs from the Respondent for settling the Scrutiny Assessment of

HUF account of Dr. Kandluri. Two independent witnesses also joined the CBI team at Tirupati. During the surprise check, inside an envelope three bundles of currency notes in the denomination of Rs. 1000/- containing in each bundle amounting to Rs. 1000x300=Rs. 3,00,000/- were found.

1.7 The Respondent admitted that the name of the addressee on the envelope from which Rs. 3 lakhs was recovered by the CBI team, was his relative. During the investigation, it was established that address on the said envelope pertained to the residence of the Respondent.

1.8 Further during the proceedings, the under mentioned file was found:-

Income Tax Department Andhra Pradesh File with Sl. No. 94, captioned as K. Upendra Kumar, 3/24, Christian Lane, Kadapa PAN:-AAIHK3741A-Scrutiny 2012-13 Ward-2 Kadapa-Assessment completed 7.7.2014.

On the Order Sheet of the said file, it was found recorded by Shri Fazululla with date as 7.7.2014 :

*"the Respondent, AR, present. Produced books of accounts, purchase bills towards steel, cement, hardware, paints, etc. he produced vouchers towards purchase of sand, labour payments etc. They were not verifiable. Case discussed. Assessment completed.*

*Income Returned - 13,53,779/-*

*Added :*

*Unverifiable expenditure:*

*a. Labour payments - Rs. 9,55,065*

*b. Purchase of Sand - Rs.3,12,100*

*Total Rs. 12,67,165/-*

*@20% 2,53,433/-*

*Total Income Assessed Rs. 16,07,210/-  
or rounded assessment completed".*

1.9 Further, a letter dated 2.7.2014 signed by the Respondent for Dr. Kandluri, explaining certain points purportedly raised by Shri Fazululla was also found in the file with initials of Shri Fazululla dated 7.7.14. Further, two more files related to the Assessment of Income Tax of Dr. Kandluri, were also seized from the possession of the Respondent.

1.10 Investigation revealed that Dr. Kandluri purchased a property in January 2011 for Rs. 53,86,400/- at Bangalore and sold a property at Kadapa in December 2011 for Rs. 1,10,00,000/-. He purportedly made improvements to the tune of Rs. 57,04,000/- to the property so purchased during the Financial Year 2011-2012 (AY 2012-13), and availed exemption for the entire amount of capital gain of Rs. 1,10,00,000/-. Shri Fazululla while completing the assessment on 7.7.2014, straight away allowed the benefit of exemption from Income Tax on capital gain to the tune of Rs. 44,36,835/- to Dr. Kandluri, by recording that the Respondent produced the bills for purchase of steel, cement and hardware paints. With regard to the remaining amount of Rs. 12,67,165/- which was declared by Dr. Kandluri as having spent for labour payment and purchase of sand etc., Shri Fazululla recorded that the Respondent produced vouchers for the said expenses, that they are unverifiable expenses and added only 20% of the said amount, i.e. Rs. 2,53,433/- along with the income already returned, i.e. Rs 13,53,779/-. Thus, in respect of the unverifiable expenses also the assessee was given the benefit of Rs. 10,13,632/-. But no such

bills/vouchers were produced by the Respondent on 7.7.14 for the entire amount exempted by Shri Fazululla. Further, Shri Fazululla did not issue any Notice/letter specifically calling for the documents pertaining to the deficiencies pointed out to the Respondent nor did he verify or record anything on file as to how he was satisfied about rectification of the said deficiencies, while completing his assessment on 7.7.14. Thus, Shri Fazululla added only Rs. 2,53,433/- to the income already returned by Dr. Kandluri and thereby caused him pecuniary advantage.

- 1.11. Shri Fazululla, on 7.7.14 by abusing his official position, demanded and accepted an illegal gratification of Rs. 3 lakhs as first installment of illegal gratification, from Dr. Kandluri, through the Respondent for giving a favourable Assessment Order to Dr. Kandluri and thereby Shri Fazululla being a public servant, obtained by corrupt means, pecuniary advantage for himself to the tune of Rs. 3 lakhs. Further, the Respondent and Dr. Kandluri abetted the offence by offering bribe to Shri Fazululla and getting the Income Tax Assessment settled in their favour by payment of bribe.

**CHARGE ALLEGED:**

2. Based on the investigation carried out by CBI it was revealed that Shri Fazululla, the Respondent and Dr. Kandluri during the period from May to July 2014, entered into criminal conspiracy at Tirupati, Kadapa, Bangalore and other places, to do the acts of accepting illegal gratification, abetting the same and criminal misconduct in the matter of scrutiny assessment of Income Tax Return of Kandluri Upendra Kumar HUF. In pursuance of the said criminal conspiracy, Shri Fazululla, by abusing his official position, demanded an illegal gratification of Rs. 5 lakhs from Dr. Kandluri through the Respondent, on 3.7.14, as a motive, to give a favorable Assessment Order in respect of Income Tax Assessment of Dr. Kandluri. The Respondent and Dr. Kandluri abetted the offence by offering bribe to Shri Fazululla and getting the Income Tax Assessment settled in their favour by payment of bribe. The criminal acts committed by the Respondent in arranging and paying the first installment of illegal gratification of Rs. 3 lakhs to Shri Fazululla on behalf of Dr. Kandluri, settling the scrutiny assessment of his client Dr. Kandluri by payment of bribe to Shri Fazululla, abetting the offence of payment of bribe, by acting as a conduit for payment of bribe by Dr. Kandluri to Shri Fazululla, causing thereby pecuniary loss to the tune of Rs. 1,07,46,567/- to the Government of India and pecuniary advantage to the tune of said amount to Dr. Kandluri, etc. amounts to bringing disrepute to the profession.

**BRIEF OF PROCEEDINGS HELD:**

3. The Board at its meeting held on 29<sup>th</sup> October, 2020 noted that the Counsel for the Respondent was present before it through video conferencing and he confirmed that he has read and understood the contents of the modalities and protocols of e-hearing and follow them. The charges alleged against the Respondent were treated as read. Thereafter, the Counsel for the Respondent made his submissions before the Board. The Board noted that the Respondent vide letter dated 18<sup>th</sup> April 2018 made a request for calling of the witness. The Board deliberated on the facts of the case along with the submissions on record and

decided to adjourn the hearing in the case. Thereafter, at the meeting held on 26<sup>th</sup> April, 2022 wherein the Counsel for the Respondent was present before the Board through video conferencing, since there was a change in the composition of the Board since the last hearing, the Board gave an option to the Counsel for the Respondent as to whether he would like to have a De -Novo enquiry or continue from the last proceedings to which he stated that he would like to continue from the last proceedings. The Board decided to call Shri Fazululla as a witness to depose before it at the next date of hearing. The Board also asked the Counsel for the Respondent to provide the latest available address, email-id and phone number of Shri Fazululla so that proper service of the Summon can be ensured. Accordingly, the hearing in the case was adjourned. Thereafter, at the time of hearing held in the case on 2<sup>nd</sup> June, 2022 wherein the Counsel for the Respondent was present through video conferencing, the Board noted that Shri Abdul Fazululla, Retd. Deputy Commissioner of Income Tax was present before it as a witness through video conferencing. The Counsel for the Respondent examined the witness. The Board also questioned the witness with respect to the facts of the case. Subsequently, the witness was discharged. Thereafter, the Counsel for the Respondent made his detailed oral submissions on behalf of the Respondent before the Board. On consideration of the documents and submissions on record, the Board concluded the proceedings in the case.

**BRIEF SUBMISSIONS OF THE RESPONDENT:-**

4. The Respondent In his defence, inter-alia, stated as under:-
  - 4.1 The Respondent is accused no.2 in CC No. 9 of 2015 in CBI Court Nampally, Hyderabad.
  - 4.2 The list of witness shown in the case by CBI, Chennai have been deposed in the Court in and around Jan 2017 and Feb 2017, except the last remaining witness, the Investigating Officer, CBI who was summoned by CBI Court on 19.04.2017 to appear before the Court. The CBI approached Hon'ble High Court of Hyderabad for grant of stay of proceedings against the Summons and it was granted. Till now, the stay has not been vacated. The last hearing held in the case was on 21<sup>st</sup> April 2022 and adjourned to 5<sup>th</sup> May 2022 for want of records from Hyderabad High Court.
  - 4.3 The ACB, CBI interpreted that situation to the effect that the Respondent has given the amount to the Officer to secure the undue benefit of allowance of Rs.1,10,00,000/- u/s 54F of the I.T. Act, to his client, Sri. K. Upendra Kumar HUF, for the Assessment Year 2012-13.
  - 4.4 In fact the CBI did come to trap another person at Tirupati, Income tax Office, when it failed to materialise, they dragged the Respondent to the scene and booked a case against him. The allegations against him are false.
  - 4.5 The cover in which the alleged cash of Rs.3,00,000 was found and addressed to Smt. Gandla Sivamma C/o. P. Musalaiah, 7/516-3, Jayanagar Colony, Cuddapah 500016, Telephone:9550004524. That cover never reached Kadapa, though it was bearing Kadapa address, as it did not bear marks of Kadapa. The phone number mentioned in the cover

- does not belong to the Respondent. The pin code mentioned in the cover is that of Hyderabad region. In fact it is found that the cover was dispatched at Bombay in the year 2011, that is, 3 years prior to the date of 07.07.2014.
- 4.6 Shri. Fazlulla, Deputy Commissioner of Income Tax did not pass Assessment Order for the Assessment Year 2012-13. Shri. S.B. Rajendra Kumar passed Assessment Order dated 31.03.2015 for the Assessment Year 2012-13 disallowing allowance of Rs.1,10,00,000/- claimed u/s 54F of the Act on the plea that though house was rented to girl students, the Electricity Charges levied by Electricity authorities, Bangalore were levied on commercial lines and water charges for using water charged at commercial lines. While passing Order the AO has not taken into account the fact that girl students living in the house are for residential purpose. Before passing final Assessment Order, the Assessing Officer issued a draft Order dated 23.03.2015, under a copy to the Superintendent of Police, ACB, IIIrd floor, Sastry Bhavan, No.26, Haddows Road, Nungam bakkam, Chennai. This implies that assessment was made under the directions of ACB, Chennai.
- 4.7 On appeal being filed before Commissioner of Income tax Appeals, Kurnool, who considered that house was residential property at the time of purchase and girl students living in the premises is for residential purpose only. Levying water charges and Electricity charges on commercial lines were only on the basis of usage of them. It does not render the residential house to commercial house on usage basis. Accordingly, the Commissioner of Income tax (Appeals), Kurnool allowed the appeal of assessee and directed the Assessing Officer to allow the allowance of Rs. 1,10,00,000/- claimed u/s 54F of the Act. The Assessing Officer passed consequential Assessment Order allowing such claim of Rs.1,10,00,000/-. The Income Tax Department also felt that claim of assessee is legally correct. Therefore, the Department did not prefer further appeal to ITAT.
- 4.8 There is no pecuniary benefit allowed to assessee as claimed by CBI.
- 4.9 The depositions of all the witnesses before CBI court, Nampally, were completed well before six months back. The investigation officer (I.O) is not attending the court on one plea or other for his deposition, inspite of more than 12 postings made by the Hon'ble CBI Court. If the IO is really interested for the speedy trial, he could have attended the court for once. It is inferred that he is delaying the Trial, because he lost hope on the case and he thought that verdict may go against ACB, CBI.
- 4.10 The Respondent prayed that he is innocent and not involved in the case, and requested for the dropping of further proceedings in this issue.
- 4.11 The Board also noted that the Respondent in his submissions made at the Prima Facie stage stated that the address mentioned in the envelope was his house address at Kadapa. But Cell Phone number mentioned in the envelope was that of Mrs. Sivamma, who is living in a tiny village name "Rayapadu" which is 100 K.M. away from Kadapa having population of hardly 200 .It is not served with good postal services. Therefore, she used his house address as he was staying in the district head-quarters having good postal services and good courier services. The envelope was dated August 2011, and originally

contained "VISA passport" received from American embassy on dt. 25/08/2011. He didn't know how the envelope reached Dy. CIT Office after three years of original service.

**OBSERVATIONS OF THE BOARD:**

5. On perusal of the documents on record, the Board noted that this is a case of offering of illegal gratification wherein the Respondent has been found present in the Income Tax Office at Tirupati before Shri S.A. Fazululla while discussing the Assessment Order for his client Dr. Kandluri. A sum of Rs.3,00,000/- was found in an envelope with the Respondent's address on the same in the table drawer of the said Official which is alleged to be the offer of bribe to the Income Tax Official for settling the claim.
6. The Board also observed that in his oral submissions before the Board, the Respondent took the plea that until the criminal charges are proved the Board should not come to a conclusion on the misconduct of the Respondent. In this regard, the Board opined that Disciplinary proceedings are distinct from Criminal proceedings. The proceedings before the Board of Discipline are quasi-judicial in nature where the misconduct can be proved by preponderance of probabilities having regard to the conduct of the Respondent which is distinct from Criminal proceedings where the commission of an offence has to be proved beyond reasonable doubt. While coming to the said view, the Board took into consideration the decision of the Hon'ble Supreme Court in the matter of "Ajit Kumar Nag -vs- General Manager (PI) Indian Oil Corporation Limited-AIR 2005 SC 4217 wherein the Hon'ble Apex Court held as under :-

*"The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rules relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt' he cannot be convicted by a Court of law. In a departmental enquiry penalty can be imposed on the delinquent Officer on a finding recorded on the basis of 'preponderance of probability'."*

Similarly in the matter of Capt. M Paul Anthony -vs- Bharat Gold Mines Limited - AIR....1999 SC 1416 the Hon'ble Supreme Court held as under:-

*"In Departmental proceedings, factors prevailing in the mind of the Disciplinary authority may be many, such as enforcement of discipline of to Investigate level of integrity of delinquent or other staff. The standard of proof required in those proceedings is also different from that required in a criminal case. While in Departmental proceedings, the standard of proof is one of preponderance of probabilities, in a criminal case, the Charge has to be proved by the prosecution beyond reasonable doubt."*



Thus, the Board viewed that the plea raised by the Respondent that the extant case is pending before Court of Competent jurisdiction and the instant disciplinary proceedings be kept in abeyance till the completion of the same cannot sustain. The issue that is to be examined by the Board is whether the conduct of the Respondent arising out of the circumstances as stated in the case records has brought disrepute to the profession and thus, amounting to 'Other Misconduct' as provided under the Chartered Accountants Act 1949.

7. The Board also noted that as per copy of the Order Sheet with respect to M/s K. Upendra Kumar HUF for the A.Y. 2012-13 brought on record by the Informant Department, the Respondent represented M/s K. Upendra Kumar HUF and was present before the Department on 25<sup>th</sup> June 2014 and 7<sup>th</sup> July 2014 alongwith certain documents and the assessment was completed.
8. The Board also perused the Interrogation Statement of Shri Shaik Abdul Fazululla, Dy. Commissioner of Income Tax, Circle 2 (1), Tirupati, recorded before CBI on 9<sup>th</sup> July 2014 wherein in response to the following questions, he deposed as under:

*“Question: On 7.7.2014, whether you met Shri P. Musalaiah, Chartered Accountant at your office chamber. If so, for what purpose?”*

*Answer: On 7.7.2014, I met P.Musalaiah at my office chamber, for discussing about the assessment scrutiny in respect of his client Kandluri Upendra Kumar's HUF account.*

*Question: Did you issue any notice under Income Tax Act, for calling P. Musalaiah or the client on 7.7.2014.*

*Answer: No, but I talked to him over phone. I actually fixed the date on 3.7.2014 for producing certain documents in support of their Income Tax return and the rebates/exemptions claimed. On 3.7.2014 they could not turn up and therefore, on their request I asked them to come on 7.7.2014.*

\*\*\*\*\*

*Question: You did not discuss anything in your Assessment Order sheet, regarding the purchase property to the tune of Rs. 53,86,400/-, and the mode of payment of this amount. How you were satisfied that this amount was actually spent by the assessee from HUF account only. Did you verify any documents to verify the mode of payment of amount from HUF account.*

Answer: I verified from the accounts of Kotak Mahindra Bank, produced by the assessee 7.7.2014.

Question: Can you show me any debits for payment of this amount from the said account.

Answer: The statement of account for January 2011, is not placed on this file.

Question: Have you confirmed about the source for these funds from the HUF statement of account.

Answer: No. I did not verify.

Question: On 7.7.2014, when CBI team intercepted you while you were transacting with P.Musalaiah, a sum of Rs. 3 lakhs was recovered from your table drawer by the team in presence of independent witnesses and on questioning you could not give any satisfactory answer as to how the said amount was found in your table drawer. What you want to say about this now.

Answer: In this regard, still I maintain that I do not know as to how the amount came to my table drawer. Sometimes, I go out on urgent official work and at that time, someone from my office, might have planted the amount, in my table drawer.

Question: If your version is accepted too, then the amount was found inside an envelope containing the name of the relative of P.Musalaiah. Explain this?

Answer: I do not know as to how the amount with the envelope containing P.Musalaiah's relative's name was found in my table drawer."

9. The Board also perused the Statement of Dr. K. Upendra Kumar, S/o K. Naganna, Kartha, Kandluri Upendra Kumar HUF, Managing Director & Consultant Urologist, Meenakshi Hospitals, Bangalore recorded before CBI on 7<sup>th</sup> August 2014 wherein he, inter-alia, deposed as under:

"For the Assessment year 2012-13, I received a similar notice in April 2014, from Shri Fazululla, Dy. Commissioner, asking me to produce the records for the Income Tax Assessed and paid by me. I contacted Shri Musalaiah and asked him to produce all the records before the authorities. Shri Musalaiah, contacted me twice or thrice during May/June 2014 and told that he met Shri Fazululla and he is not satisfied with the records produced and stated that the property at Site No. 97, 11<sup>th</sup> Cross, Thavarakare Extension, Bangalore – 29 would attract Capital Gains Tax. I requested Shri Musalaiah, to represent

with all available records and settle the issue. He stated that he met Shri Fazululla twice and he was not satisfied with the explanation given by me for the said property. If entire bills, regarding the improvements, interiors made to the said property are produced, then capital gains tax may not be levied. Otherwise, I have to pay atleast Rs.5 to 10 lakhs as Capital Gains Tax. I requested him to **settle the issue at the earliest (emphasis provided)**. Three or four days prior to 7.7.2014, Shri Musalaiah spoke to me, stating that he was going to Income Tax Office. I requested him to settle the issue. On the same day, Shri Musalaiah again called me and told that he explained the position to Dy. Commissioner, but the capital gains tax to the tune of Rs.5 to 10 lakhs has to be paid. I told him that if it is 5 to 10 lakhs pl. pay the tax and settle the issue. I will transfer the amount to Musalaiah's account. On that day, two or three times he called me and the above said conversation took place. I did not mention anything as "Ravindra or Jyothi" during the conversation. I also told Shri Musalaiah that I am in the process of transfer of these files to Income Tax Department, Bangalore. Thereafter, at about 6 pm, I came to know that CBI has arrested Shri Musalaiah, as he paid a bribe of Rs.3 lakhs to Shri Fazululla to settle my Income Tax problem."

10. The Board also perused the Continuation Statement of Dr. K. Upendra Kumar, S/o K. Naganna, Kartha, Kandluri Upendra Kumar HUF, Managing Director & Consultant Urologist, Bangalore recorded before CBI on 8<sup>th</sup> August 2014 wherein in response to the following questions, he deposed as under:

"Question: On 7.7.2014, Shri P.Musalaiah paid Rs.3 lakhs to Shri Fazululla as bribe, for settlement of your income tax assessment. Wherefrom you had drawn this amount?

Answer: I did not ask Shri P.Musalaiah to pay any amount as bribe to Shri Fazululla for settlement of my income tax assessment. **I asked him to only settle the issue and pay the tax due (emphasis provided)**.

Question: If it is the case that you were ready to pay Rs.5 to 10 lakhs as tax now, why did not you pay the same voluntarily before assessment/scrutiny of your return?

Answer: I did not know about these tax implications and it was only Shri P.Musalaiah, who finalized my tax liabilities and I only followed his advice."

11. The Board further perused the Chargesheet filed by CBI in the Court, wherein it was explicitly mentioned as under:

"On 6.7.14, Dr. Upendra Kumar informed Shri Musalaiah over phone that he arranged that demanded bribe and insisted P.Musalaiah to get the orders of Assessment immediately from S.A. Fazululla, as he is paying money to Shri Fazululla.

On 6.7.2014 at about 1710 hrs, Shri Musalaiah called Shri S.A. Fazululla and confirmed that they would meet on 7.7.2014.

On 7.7.2014, P.Musalaiah met S.A. Fazululla at the latter's office chamber at the Office of the Commissioner of Income Tax/Tirupati and he made Dr. Upendra Kumar to talk to Shri Shaik Abdul Fazululla over phone, at about 1141 hrs. During this conversation, Shri Shaik Abdul Fazululla pointed out to Dr. K. Upendra Kumar, various deficiencies in the Income Tax Return of the assessee and asked him to produce various documents in support of his claims for seeking exemption under capital gain. Thereafter, Musalaiah and K. Upendra Kumar continued conversation in which Musalaiah insisted that if Rs.5 lakhs is paid to Shri S.A. Fazululla, there will be no problem. For this Upendra Kumar agreed that he would arrange the remaining two lakhs later. Further, Shri Musalaiah insisted Upendra Kumar to pay the total amount of five lakhs immediately for which Upendra Kumar replied that he would arrange the balance amount by the next day.....

During the surprise check, following items were found:

- a) An envelope captioned as VFS Global, addressed to "9003885049 Sivamma Gandla, Gandla Sivamma, 7/516-3, Jaya Nagar Colony, Cuddapah-500016, Tel: 91-9550004524 Visa: B1/B2, Hold at Location Hyderabad VFS I/W: 5 24.08/2011 0845 Scan No. 55.

Shri Musalaiah admitted that the name of the addressee on the envelope (i.e., Sivamma Gandla) from which Rs.3 lakhs was recovered by the CBI team, is his relative. But he could not explain as to how the envelope containing his relative's name was found with the amount of Rs.3 lakhs in the table drawer of Shri Shaik Abdul Fazululla. During the investigation, it was established that address on the said envelope pertains to the residence of Shri Musalaiah at Kadapa and through the said envelope, he received the passport of his relative, Sivamma Gandla, duly visa stamped, the same envelope was used to put bribe money to be handed over to Shri Shaik Abdul Fazululla and the said envelope was recovered during the surprise check.....

Shri Shaik Abdul Fazululla (A-1), Shri P. Musalaiah (A-2) and Dr. K. Upendra Kumar (A-3), during the period from May to July, 2014, entered into criminal conspiracy at Tirupati, Kadapa, Bangalore and other places, to do the illegal acts of accepting illegal gratification, abetting the same and criminal misconduct in the matter of scrutiny assessment of Income Tax return of Kandluri Upendra Kumar HUF.

In pursuance of the said criminal conspiracy Shri Fazululla, on 07.07.2014 by abusing his official position, demanded and accepted an illegal gratification of Rs. 3 lakh as first installment from Dr. Kandluri Upendra Kumar, through P. Musalaiah, for giving a favorable assessment order to Dr. Kandluri Upendra Kumar. Further, Sh. P. Musalaiah, CA and Dr. Kandluri Upendra Kumar, abetted the offence committed by Abdullah Fazaulullah in obtaining illegal gratification."

12. The Board also noted that the Respondent had been arrested on 7<sup>th</sup> July 2014 and released on bail on 4<sup>th</sup> August 2014.

13. The Board also noted that the witness who was also a co-accused in the criminal case along with the Respondent deposed before it as under:
- (a) Till date, neither he nor the Respondent had been examined in the Criminal proceedings.
  - (b) Neither he nor the Respondent gave any Confessional Statement either before the CBI or the Court.
  - (c) The police had not recorded his Statement till date.
  - (d) The door of his room in the Income Tax office was always open. His drawer was also always open and it did not have a lock and key.
  - (e) He was not aware of the existence of the envelope with cash inside it in his table drawer until the CBI officials found it.
  - (f) The Respondent was also present in his room with him discussing about his client's case when CBI officials came and conducted the surprise check.
  - (g) When the CBI officials did surprise check in his office, they found cash of Rs. 3 Lakh inside an envelope which was kept in his office drawer. Then, the CBI officials went to his house where nothing was found.
  - (h) The name of the mother-in-law of the Respondent's son and address of the Respondent was written on the envelope. VFS was the sender of the said envelope. The Respondent's son was also examined in the Court and he said that he received the envelope in Hyderabad.
  - (i) He was not aware as to who had kept the envelope in his table drawer. May be the Respondent or the assessee.
  - (j) The phone tapping was done by CBI and it was played in the Court. There was telephonic conversation between him and the Respondent. However, it was not the exact replica of the recording and was edited.
  - (k) Departmental enquiry against him is still going on.

The Board also noted that the Respondent pointed out that since the witness himself is a co-accused alongwith the Respondent in the criminal case, the possibility of Statement in defence of his own Statement cannot be ruled out as he would keep in mind to safeguard his own interest.

The Board noted that the witness had been summoned in the instant disciplinary proceedings at the request of the Respondent only. Further, it is an acceptable proposition that evidence given by a co-accused can be relied upon as long as it has been corroborated in material particulars with other direct or circumstantial evidences on record.

14. The Board also perused the copy of the Assessment Order dated 31<sup>st</sup> March 2015 passed for the A.Y. 2012-13 in the case of Kandluri Upendra Kumar HUF brought on record by the Respondent and noted as under:

*Notice u/s 143(2) was issued and the case was posted for hearing from time to time. In response, initially, Shri P.Musalaiah CA appeared on behalf of assessee and filed information. This case is posted for hearing on 27.03.2015. None appeared on the date of*

hearing, however, a letter dated 27.03.2015 was filed by the assessee. In his letter the assessee has stated that "the assessment was already completed on 07.07.2014 by the Ass. Commissioner of Income Tax, Tirupati and, therefore, the present notice issued by you is void abinito."

Thus, the Board observed that on the one hand the Respondent in his submissions in the instant disciplinary case before the Board is claiming that Shri. Fazululla, Deputy Commissioner of Income Tax did not pass Assessment Order for the Assessment Year 2012-13 in the case of HUF. Whereas, his client is referring to the completion of the assessment for the A.Y. 2012-13 on 7<sup>th</sup> July 2014 before the Income Tax Department which is also of the same date as per the Order Sheet of the Shri. Fazululla, Deputy Commissioner of Income Tax.

15. The Board also noted that the Respondent in his defence placed reliance on the Assessment Order dated 31<sup>st</sup> March 2015 passed by the Assessing Officer in respect of the HUF, Appeal disposal Order dated 12<sup>th</sup> July 2015 passed by the Commissioner of Income Tax(A) Kurnool together with the consequential Order of the Assessing Officer dated 30<sup>th</sup> August 2016 . On perusal of the same, the Board was of the view that that in the extant disciplinary proceedings the conduct of the Respondent was being examined as to whether his alleged acts have brought disrepute to the profession. Whereas in the proceedings before the Commissioner of Income Tax(A) Kurnool, the issue whether the benefit of Section 54/54F of the Income Tax Act 1961 should be allowed to the assessee was examined which was different.

16. The Board, on consideration of the submissions and documents on record thus observed that CBI filed Charge Sheet u/s 120B IPC r/w section 7, 12 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act 1988 and substantive offences thereof against the Respondent and others in Hon'ble Court of Principal Special Judge for CBI cases, Nampally, Hyderabad.

The Board further noted that in his Statement recorded before CBI, Shri Shaik Fazululla stated that he does not know as to how the amount with the envelope containing the Respondent's relative's name and Respondent's address was found in his table drawer. He further stated that he did not demand or accept any bribe amount from the Respondent. The Board further observed from the Statement of Shri Shaik Fazululla that on 7<sup>th</sup> July 2014 when the surprise check took place, the Respondent was present in the room of Shri Shaik Fazululla to discuss about the scrutiny assessment in respect of his client Kandluri Upendra Kumar's HUF account. No Income Tax Notice was issued either to the client of the Respondent or the Respondent to appear on the said date. On their(client/Respondent's) telephonic request, Shri Shaik Fazululla asked them to come on 7<sup>th</sup> July 2014. Further, the envelope with the name of the Respondent's relative and the address of the Respondent inscribed on it containing cash was found in his table drawer . The address which was specified on the envelope was of 'Cuddapah 'whereas the surprise

visit of the CBI officials took place at *Tirupati* which is at a distance of around 140 km. The Respondent was not able to provide any justifiable reason for the presence of the envelope with the name of the Respondent's relative and the address of the Respondent inscribed on it containing cash inside the table drawer of the Income Tax official.

The mobile number which as per Institute's records also belongs to the Respondent was intercepted by CBI. The Charge sheet also clearly indicated that there were telephonic calls between the Respondent and the said Income Tax official and also between the Respondent and his client. The client of the Respondent also in his Statement before CBI stated that he had asked the Respondent to settle his case with the Income Tax official. The moot question here is what constituted 'to settle the issue'?

On a careful perusal of the direct, corroborative and circumstantial evidences on record, the Board observed that the assessment for the concerned HUF for the A Y. 2012-13 had been done by Shri Fazululla in which the client was represented by the Respondent. At the time of surprise check at the office chamber of Shri Fazululla on 7<sup>th</sup> July 2014 by the CBI officials, the Income Tax file of the client was found on his table. Further, the Respondent was present in the office chamber of the Income Tax official when the CBI officials found an envelope containing cash with his address and his relative's name scribed on it. Further, no Income Tax Notice had been issued to the Respondent /his client to appear on the said date. The Respondent was the only person who was the linkage/ point of contact between the Income Tax official and the client. Thus, the oblivion being claimed by the Respondent is certainly not acceptable. The Board observed that it is an admitted fact that the envelope with the name of the Respondent's relative and the address of the Respondent inscribed on it containing cash was found in the table drawer of the Income Tax official when the surprise check by the CBI in his office took place and the Respondent was also present there. Considering the facts and submissions on record, the Board was of the view that the way and the manner in which the role of the Respondent has emerged in the case clearly indicates that he had acted in a manner which has brought disrepute to the profession.

16. The Board was also of the view that offering bribe to a Public Servant to perform public function is a serious offence and the Respondent in the instant case in the circumstances narrated above has given bribe to Shri Fazululla, Income Tax Officer for clearing the Income Tax returns of his client, Kandluri Upendra Kumar HUF which clearly points out at his misconduct. Such an action on the part of the Respondent is clearly unbecoming of a Chartered Accountant. The Board was also of the view that instead of advising his client to follow Rules, the circumstantial evidences clearly suggest that the Respondent himself became a conduit for inducing bribe which is an activity prohibited by law and thereby has certainly brought disrepute to the entire Profession. Accordingly, the Respondent is held guilty in respect of the charge alleged.

CONCLUSION:

17. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of Other Misconduct falling within the meaning of Item (2) of Part IV of the First Schedule to the Chartered Accountants Act, 1949 read with section 22 of the said Act.


Sd/-  
CA. Prasanna Kumar D.  
(Presiding Officer)

Sd/-  
Ms. Dolly Chakrabarty (IAAS, retd.)  
(Government Nominee)

Sd/-  
CA. (Dr.) Raj Chawla  
(Member)

DATE: 10<sup>th</sup> February 2023

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

  
नीलम पुंडीर / Neelam Pundir  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनवाचक निदेशालय / Disciplinary Directorate  
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया  
The Institute of Chartered Accountants of India  
आईसीएआई भवन, विश्वास नगर, शाहजहाँ, दिल्ली-110032  
ICAI Bhanu, Vishwas Nagar, Shahjahan, Delhi-110032