



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

[PR- 45/14-DD/75/2014/BOD/319/2017]

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:-

Shri Amith D. Mallinathpura IRS
Deputy Commissioner of Income Tax,
Central Circle 2(2), C R Building (Annexe), Queen's Road
BANGALORE-560061.

.....Complainant

-Vs-

CA. M G Vinaya Simha (M.No.208874)
No.21/A, Pearl Gardens,
Vajarahalli, Kanakapura Road,
BANGALORE-560062.

.....Respondent

[PR- 45/14-DD/75/2014/BOD/319/2017]

MEMBERS PRESENT (in person):

CA. Rajendra Kumar P, Presiding Officer
Ms. Dolly Chakrabarty (IAAS, ret'd.), Government Nominee

Date of hearing and passing Order: 15th June 2023

1. The Board of Discipline vide Findings dated 10th February 2023 was of the view that **CA. M G Vinaya Simha (M.No.208874)** 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. M G Vinaya Simha** and communication dated 25th May 2023 was addressed to him thereby granting him an opportunity of being heard on 15th June 2023 which was exercised by him by being present in person. He confirmed receipt of the Findings of the Board. In his representation, he, inter-alia, stated that the only evidence essentially relied upon by the Board is his own Statement and requested the Board to reconsider the Findings rendered. In the event the Board chooses to proceed with the Order for imposition of penalty then, in that case, he prayed that the penalty which would cause least harm may kindly be considered.
3. On consideration of the representation of the Respondent, the Board was of the view that since the Board has already arrived at its Findings and there is no provision for review of the same, no new submissions can be adduced at this stage.
4. Thus, upon consideration of the facts of the case, the consequent misconduct of **CA. M G Vinaya Simha (M.No.208874)** and keeping in view his representation before it, **the Board, decided to remove the name of CA. M G Vinaya Simha (M.No.208874) from the Register of Members for a period of 15(fifteen) days.**

Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

प्रमाणित होने के लिए प्रमाणित/
Certified to be true copy

निशा शर्मा / Nisha Sharma
वरिष्ठ कार्यकारी अधिकारी / Sr. 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 Bhawan, Vishwas Nagar, Shahdara, Delhi-110032

Sd/-

Ms. Dolly Chakrabarty (IAAS, ret'd.)
(Government Nominee)

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.: PR- 45/14-DD/75/2014/BOD/319/2017

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:

**Shri Amith D. Mallinathpura IRS
Deputy Commissioner of Income Tax,
Central Circle 2(2), C R Building (Annexe)
Queen's Road,
BANGALORE - 560 001**

.....Complainant

Versus

**CA. M G Vinaya Simha (M.No.208874)
No.21/A, Pearl Gardens,
Vajarahalli,
Kanakapura Road,
BANGALORE - 560 062**

.....Respondent

**Date of Final Hearing : 16th December, 2022
Place of Final Hearing : New Delhi / through videoconferencing**

PARTIES PRESENT (through videoconferencing):

**Respondent : CA. M. G. Vinaya Simha
Counsel for Respondent : Adv. T. V. Ajayan**

FINDINGS:

Background of the case:

- 1.1 Shri H. Nagaraja is the proprietor of M/s. SLV Housing Development Corporation. He alongwith his wife Smt. Bhagya Nagaraja (PAN ACDPN3764B) and other family members are partners in M/s. Jewel Associates, M/s. Ink Builders and Developers and M/s. Sri Krishna Properties having common address No. 14, Sri Ganesh Krupa, 5th Cross, New Bank Colony, Konankunte, Bangalore.

Consequent to the search action under Section 132 of the Income Tax Act 1961, in the case of Sri H. Nagaraja and his group of cases, the assessment under Section 143 (3) read with Section 153A was completed on 30.12.2010. Subsequently, the assessments were reopened in respect of Shri. H. Nagaraja and his group concerns and the assessments were completed u/s 143(3) read with Section 147 of the I.T. Act 1961 on 13.03.2013 raising the following demands:

PAN NO	Name of the Assessee	Asstt Year involved	Total Demand Raised (in Rs.)
ABMPN7731L	Sri. H. Nagaraja	2005-06 to 2008-09 & 2010-11	6,18,00,016/-
ACDPN3764B	Smt. Bhagya Nagaraja	2005-06 to 2008-09	9,80,22,535/-
ABLFS6130F	M/s. Sri Krishna Properties	2007-08 to 2009-2010	1,84,69,084/-
AABFI5582J	M/s. Ink Builders and Developers	2008-09	2,03,04,618/-
AAFFJ5900M	M/s. Jewel Associates	2005-06 & 2006-07	1,32,61,489/-

- 1.2 The Assessment Order along with demand notices u/s 156 of the Income Tax Act 1961 were duly served on Shri H. Nagaraja on 28.03.2013. Sri H. Nagaraja claimed that he is authorised to represent all the aforesaid entities through his authorised representative i.e. the Respondent. Sri H. Nagaraja, Proprietor of M/s. SLV Housing Development Corporation, Smt. Bhagya Nagaraja and his other family members running the other firms had not paid the taxes due by them to the Department. The Respondent furnished to the Department fraudulent challans amounting to Rs.3,82,00,000/- (Rupees Three Crores Eighty two lakhs only) by creating false documents and had dodged the Income Tax Department.

CHARGE ALLEGED:

2. The charge of the Complainant is that the Respondent fabricated the tax paid challans, furnished fabricated tax paid challans to the Income Tax Department and attempted to defraud Revenue.

BRIEF OF PROCEEDINGS HELD:

3. At the time of hearing held in the case on 16th December, 2022, the Board noted that the Respondent alongwith his Counsel were present before it through video conferencing. However, neither the Complainant/their authorised representative was present before it nor was there any intimation as regards their non-appearance. Since the notice for hearing had been duly served upon the Complainant Department, the Board decided to proceed ahead with the hearing in the case. The Board also noted that the Complainant/ their authorised representative was also not present before it at the time of its previous hearing held on 21st June, 2022. Thereafter, the Counsel for the Respondent made his further submissions before the Board. On consideration of the documents and submissions on record, the Board concluded the proceedings in the case.

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BRIEF OF SUBMISSIONS OF THE RESPONDENT:

4. The Respondent, in his defence, inter-alia, submitted as under:
 - 4.1 The complaint has been preferred by the Complainant Department against the Respondent raising allegations of fabrication of tax paid challans, furnishing of fabricated tax paid challans to the Income Tax Department and attempt to defraud Revenue. The Complaint preferred lists the particulars of evidence adduced in support of the allegations made as statement under section 131 of the IT Act, dated 29.01.2014, copy of tax paid challans and copy of FIR.
 - 4.2 The complainant had also raised the very same allegations arising out of the very same set of facts, in a complaint under section 200 CrPC before the Economic offences court alleging, inter-alia, that from the enquiries conducted by the assessing officer, it is found that the Respondent has fabricated the payment challans and submitted the said challans before the assessing officer and the Respondent has deliberately, willfully, knowingly made a false statement before the authorities which he knew and believed to be false and did not believe to be true for which the Respondent is liable to be prosecuted for the offence punishable under Section 277 of the I. T. Act, 1961. It was also alleged that the Respondent willfully and with an intention to enable his client/ assessee Mr. H. Nagaraja and his group concerns to evade tax knowingly created the forged payment challans and produced before the public authorities, for which the Respondent is liable to be prosecuted for the offence punishable under Section 277A of the Income Tax Act, 1961.
 - 4.3 Pursuant to the aforestated complaint under Section 200 CrPC, before the Economic Offences Court, in the case C.C. No.86/2014, the Respondent had filed an application under Section 245(2) of Cr.PC to discharge him from the offences alleged and the Honourable Special Court (Economic Offences), Bangalore has since been pleased to discharge the Respondent from the offences punishable under Section 277 and 277A of the I.T. Act, 1961, vide Order dated 31st July 2017 in the aforementioned CC.No.86/2014. The Income Tax Department has filed an appeal before Sessions Court on this matter in December 2017. However, till today nobody has appeared from the Income Tax Department to press the case, even though Respondent has argued through his Advocate on multiple occasions. The Respondent bonafide believes that the aforesaid Order discharging the Respondent in the aforementioned case will decidedly be upheld by the Higher Courts. The Respondent thus submits that the said Order of discharge, wherein the complaint made by the Complainant on the same set of facts and allegations has miserably failed, clearly evidences that the allegations against the Respondent are false, incorrect and untenable.
 - 4.4 However, on the very cause of and the very same set of facts, in as much as the Respondent had also caused an FIR to be registered under Crime No.0013/2014 dated 01.02.2014, raising the very same allegations, the matter is presently pending consideration in C.C 52528/2015 dated 09-06-2015 before the XXIX Addl. CMM Court, Bangalore at the stage of Framing of Charge or Plea.
 - 4.5 In the aforesaid facts and circumstances, compelling the Respondent to lead evidence or defend the allegations in the present proceedings would prejudice the Respondent's defence

in the criminal case in as much as the identity of the witnesses examined by the Respondent and their averments, the documents that the Respondent chooses to rely on, the nature of defence that the Respondent is likely to adopt in the criminal case, would all be then exposed to the Complainant and would thus grossly undermine the efficacy of the defence that the Respondent intends to mount in the Criminal case. The proceeding with the present enquiry by this Board would also be violative of the Respondent's fundamental right against self-incrimination under Article 20 (3), particularly the right to silence, which protection extends to the Respondent, beyond the present enquiry, given that the Criminal proceedings are underway before the XXIX Addl. CMM Court, Bangalore.

- 4.6 The Honourable Supreme Court, in its decision rendered in Delhi Cloth & General Mills Ltd v Kushal Bhan, AIR 1960 SC 806 has held that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced. This decision was followed by the Honourable Supreme Court in Tara Oil Mills v Kushal Bhan, AIR 1965 SC 155. Similar view has also been taken in the decision in Kusheshwar Dubey v Bharat Coking Coal Ltd, (1988) 4 SCC 319, wherein it has been held that when the criminal case and the disciplinary proceedings are grounded upon the same set of facts, the disciplinary proceedings ought to be stayed pending the final disposal of the criminal case.
- 4.7 In the given peculiar facts and circumstances of the present matter the allegations are ex-facie untenable. Admittedly, the Respondent is conceded as handling tax matters and appearing before the tax authorities as a qualified professional. Admittedly, there is no allegation against the Respondent that the Respondent has made pecuniary gains by indulging in the alleged submission of fabricated challans. In other words, the Complainant does not allege any credible motive that the Respondent has for indulging in such fabrication of challans and on the contrary the alleged specious reason taken from the Respondent in his statement dated 29.01.2014 is that the Respondent intended not to stress the Respondent's client/assessee as regards tax payments since he was recovering from an unsuccessful surgery.
- 4.8 Given that the Respondent is regularly appearing before tax authorities it cannot be gainsaid that the Respondent does not know the consequences of an admission. Therefore, the very fact that the statement taken from the Respondent records the aforesaid incredulous reason as the motive of the Respondent, despite the factum of the Respondent being a qualified CA well versed in tax laws and having represented many clients and therefore being well aware of the considerable risk and jeopardy to the Respondent's professional reputation, would hardly lend credence to the contention of the complainant that the Statement was made voluntarily without coercion, duress or threat; rather on the contrary, the said factors would amply evidence that the statement could not have been voluntary. The Statement has been so recorded, despite the fact that there is no allegation of evidence of any pecuniary gains to the Respondent and even without an allegation that the Respondent has done so on the instruction of the assessee. On the contrary, the statement has been taken with a specific say exculpating the assessee. Compelled testimony can be obtained not only by direct physical threats or violence, but also by subtle, overbearing, mental or physical intimidatory torture, all of which, the Respondent avers, has been applied in unbearable measures on the Respondent to obtain the impugned inculpatory statements.

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- 4.9 These facts can only but overwhelmingly point to the high probability of the statement being coerced and obtained under duress, for reasons that can very well be comprehended by anyone well acquainted with the manner in which statements are routinely recorded by Income Tax officials. It would also be pertinent to note at this juncture that the Respondent has a nuclear family consisting of only himself, his wife and daughter. This is a matter where there is more than that meets the eye and the documents as they appear are not what they factually are. In the fact and circumstances explained above, this would be clearly evident to any prudent person. It is inconceivable that the statement remains as is, but only for the ground reality that the coercion, duress and threat to the Respondent are very real and only continue to exist.
- 4.10 The preponderance of probability being yet another cogent reason as to why this Board should keep the present proceedings in abeyance and await the outcome of the case given that a Criminal Court is seized of the matter. Moreover, the very fact that the Respondent stands discharged in the case registered against the Respondent in the Economic Offences Court would also heighten the probability of the contentions raised by the Respondent that the statements are not voluntary and have been obtained under coercion, duress and threat being true and being proved as such in the Criminal Court.
- 4.11 In para 11.12 of the prima facie opinion, the Director (Discipline) has sought to negate the Respondent's valid contentions on why the statement under section 131 of the Income Tax Act obtained under duress has not been retracted, on the premise that the specific denials of the crediting bank were brought on record by the Complainant Department. The denial of the crediting bank speaks solely to the factum of non-crediting of the amounts in the Bank and does not in any way controvert the Respondent's contentions that the statement was under duress nor does it rebut the Respondent's contention that it was not retracted so as to not hinder the investigation process. Thus, the prima facie opinion has been formed on assumptions and without any rationale basis and deserves to be ignored for the aforementioned reasons.
- 4.12 The Respondent humbly prayed that this Learned Board of Discipline may please be kind enough to keep the present inquiry proceedings in abeyance till the final outcome of the matter that is presently pending before the Criminal Court and the Board of Discipline may kindly not proceed as per Rule 14(9) under Chapter IV of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, with arriving at a finding on whether the Respondent is guilty or not of the offence 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.

OBSERVATIONS OF THE BOARD:

5. On perusal of the submissions and documents on record, the Board noted that the primary defence which has been taken by the Respondent in the instant case is that the present proceedings may be kept in abeyance as the Complainant Department has filed a criminal case against the Respondent on the same cause and set of facts which is pending before the XXIX Addl. CMM Court, Bangalore at the stage of Framing of Charge or Plea. He also referred to the

decision of the Honourable Supreme Court, rendered in Delhi Cloth & General Mills Ltd v Kushal Bhan, AIR 1960 SC 806, Tara Oil Mills vs Kushal Bhan, AIR 1965 SC 155 and Kusheshwar Dubey v Bharat Coking Coal Ltd, (1988) 4 SCC 319.

- 5.1 As regards the plea of the Respondent that the criminal proceedings on the same allegations are pending and charges against him were not framed, the Board viewed that Criminal proceedings are distinct from Disciplinary 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 offence is required 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 (PJ) 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 or 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."

The Board also took into view the observations of the Honorable Supreme Court in the matter of Kusheshwar Dubey v Bharat Coking Coal Ltd, (1988) 4 SCC 319 as stated hereunder:

*"The view expressed in the three cases of this Court seem to support the position that **while there could be no legal bar for simultaneous proceedings being taken**(emphasis provided), yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, strait-jacket formula valid for all*

cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it necessary to say anything more, particularly when we do not intend to lay down any general guideline."

Further, it is not an inflexible rule of Law that disciplinary proceedings must be stayed in each and every case where a trial is pending before the Criminal Court on the very same facts/charges. The stay Orders referred to by the Respondent have been passed in specific cases keeping in view the facts of the case and cannot be applied in general to stay/keep in abeyance all the disciplinary proceedings before it. Thus, the Board viewed that the plea raised by the Respondent is not sustainable as 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.

- 5.2 The Board also perused the Order dated 31st July 2017 passed by the Special Court of Economic Offences, Bangalore discharging the Respondent from the offence punishable u/s 277 and 277A of the Income Tax Act 1961 and noted that the same provided as under:

"It is not the case of the complainant that accused received the amount from the assessee or on the direction of the assessee to evade the payment of tax and penalty, the accused created the challans. The accused in the statement given to before the Deputy Commissioner stated that the false challans were submitted in order to avoid the stress of the assessee. Admittedly, criminal case under general law case is registered and charge sheet is filed. Thus, the Court of the considered view that there were are no material to frame the charge against the accused for the offence punishable u/s 277 & 277A of the Income Tax Act, 1961, hence liable to be discharged."

The Board was of the view that the issue to be examined before the Board and that before the Special Court of Economic Offences, Bangalore was distinct.

- 5.3 The Board also noted that during enquiry despite giving an opportunity to the Respondent to make his submissions on the merits of the case i.e. the charge alleged against him, he chose to confine himself to the submissions(oral and written) already made in the case.
- 5.4 As regard the charge alleged against the Respondent, the Board noted that the Respondent vide his letter dated 16.09.2013 addressed to the Income Tax Department furnished a copy of challan in support of payment made in the case of Sri H. Nagaraja amounting to Rs.1 crore with respect to the A.Y. 2005-06. Subsequently, he furnished copies of the following challans in the group concerns:

Sl. No.	Name of the case	Date of payment	Amount shown as paid (in Rs.)
1	M/s. Ink Builders & Developers	19.09.2013	50,00,000
2	M/s. Jewel Associates	19.09.2013	50,00,000
3	M/s. Jewel Associates	23.09.2013	82,00,000
4	Smt. Bhagya Nagaraja	19.09.2013	50,00,000
5	M/s. Sri Krishna Properties	19.09.2013	50,00,000
		Total	2,82,00,000/-

Thereafter, the Respondent vide his letter dated 30.10.2013 addressed to the Income Tax Department stated that Sri H. Nagaraja is co-operating with the Department in all its proceedings and sought for a week's time to make arrangements for payment of tax in instalments of Rs.25 lakhs each. Subsequently, the Respondent further furnished copies of challans for having paid Rs.25,00,000/- each in respect of Sri H. Nagaraja, M/s. Ink Builders and Developer and Smt. Bhagya Nagaraja.

- 5.5 The Board also noted that the Complainant Department vide letter dated 30.12.2013 asked Sri H. Nagaraja and the Respondent to furnish the original challans in support of the following tax payments:

Name of the Assessee	Date of Payment	Amount of Payment (in Rs.)	Bank details	BSR Code
Sri H Nagaraja	05-09-2013	1,00,00,000	SBI, Bangalore, Branch, Bangalore	
Sri. H Nagaraja	30-11-2013	25,00,000	SBI, Vijayanagar	000788
M/s Jewel Associates	19-09-2013	50,00,000	SBI, Bangalore, Branch, Bangalore	0000813
M/s Jewel Associates	23-09-2013	82,00,000	SBI, Bangalore, Branch, Bangalore	0000813
Smt. Bhagya Nagaraj	30-11-2013	25,00,000	SBI Vijayanagar Branch	0007985
M/s Sri Krishna Properties	19-09-2013	50,00,000	SBI, Bangalore Branch, Bangalore	0000813
M/s Ink Builders and Developers	19-09-2013	50,00,000	SBI, Bangalore Branch, Bangalore	0000813
M/s Ink Builders and Developers	30-11-2013	25,00,0000	SBI, Vijayanagar Branch	7985

- 5.6 In response thereto, Sri H. Nagaraja vide letter dated 09.01.2014 stated that he has not made any payments and that he is not aware of any challans filed with the Department. The Respondent also vide his letter dated 9th January 2014 stated that Sri H. Nagaraja had undergone a serious operation and was recovering from the same. With the intention of not putting pressure on him about the payment of tax, the Respondent on his own and without his knowledge submitted the challans.
- 5.7 The Board also noted that the Complainant Department addressed letter dated 30.12.2013 to the Manager, State Bank of India, Bangalore Branch and also to the Manager, Vijayanagar Branch to confirm the payments of the Taxes being paid on the dates mentioned on the affixed seal of their respective branches. The State Bank of India, Bangalore Branch vide its letter dated 31.12.2013 confirmed that the payments mentioned in their letter are not reflected in the records. The Manager, Vijayanagar Branch vide his letter dated 31.12.2013 stated that the payments mentioned in the challans pertain to some other assessee and do not pertain to the parties mentioned by them. They also furnished copy of challans with journal number and date to the Income Tax Department.

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5.8 The Board further noted that the Respondent in his Statement on Oath recorded u/s 131 on 29th January 2014 , in reply to the Q no. 18, Q 19 and Q 20 stated as under:

"Q.18 I am showing you a copy of challan marked as Annexure HN/01/pg -9 of Rs. 50 lakhs on State Bank of India, Bangalore having BSR code 0000813, dated 19.09.2013. Kindly state whether the challan has been furnished by you and the challan pertain to M/s. Ink Builders and Developers.

Answer: yes I confirm that the above challan has been furnished by me where a claim of Rs.50 lakhs being paid towards the arrear demands of M/s. Ink Builders and Developers for A.Y. 2008-09 has been made.

Q-19 It is brought to your attention that the above mentioned payments claimed to have been made by the assessee's Smt. Bhagya Nagaraja, M/s. Sri Krishna Properties and M/s. Ink Builders and Developers. Accordingly, a letter was written to the manager of State Bank of India, Bangalore Branch to confirm the claim of payments having being made by Smt. Bhagya Nagaraja M/s. Sri Krishna Properties and M/s. Ink Builders and Developers. In reply to the letter, the Bank Manager, State Bank of India vide letter dated 31.12.2013 replied that the payments mentioned against the assessee's firm for relevant A.Ys were not reflected in their records. Kindly explain as to why the challans furnished by you and the payment are neither reflected in Department's system nor in the Bank Records?

Answer: I confirm that the challans mentioned above were not paid by the assessee Smt. Bhagya Nagaraj, M/s. Sri Krishna Properties and M/s. Ink Builders and Developers. The payments claimed as made by the challans have not been paid. I on my own have prepared these challans without the knowledge of the assessee and furnished the copy of the challan to the O/o Deputy Commissioner of Income Tax, Central Circle 2(2), Bangalore.

Q.20 Kindly state as to how you have prepared the Bank Challans on your own?

Answer: The tax payer's counterfoil challans has got two components right hand side of the challan is bearing the Bank's seal is found, the left side of the challan contains the details of the tax payer like PAN No., Assessment Year, Amount of Tax, Cheque number and drawee Bank details. I created a word documents which contained all the columns which are found in the tax paid challans and filled up the details of assessee Smt. Bhagya Nagaraja, M/s. Sri Krishna Properties and M/s. Ink Builders and Developers. I took a print out of the above word document on which I placed the Bank seal portion of another person's genuine tax paid challans. I do not remember exactly whose genuine tax-paid challan I used for preparing the above mentioned fabricated challans. It is this copy of challans that I furnished to the IO/o Deputy Commissioner of Income Tax, Central Circle 2(2), Bangalore".

5.9 The Board further noted that the Respondent also contended that he has not retracted his earlier statement given to the Deputy Commissioner of Income Tax, Central Circle 2(2), Bangalore which was obtained under duress and coercion, because he had been granted bail by the Magistrate Court—11, Bangalore and one of the conditions of the bail Order granted by the

Hon'ble Magistrate Court was not to interfere in the investigation by the judicial police and also to co-operate and meet them only when summoned by them i.e. Commercial Street Police Station Bangalore. Thus, the Respondent neither tried nor decided to retract his Statement given u/s 131 of the Income Tax Act, 1961 or take any other appropriate steps to prove his innocence. In this regard, the Board was of the view that apart from the aforesaid Statement on Oath of the Respondent, there were other evidences also like various written communications addressed to the Income Tax Department by the Respondent on behalf of his client, communication addressed by the Banks to the Income Tax Department in response to their letters which squarely prove the misconduct alleged against the Respondent.

- 5.10 In view of the above, the Board noted that the Respondent furnished fraudulent challans amounting to Rs.3,82,00,000/- (Rupees Three Crores Eighty two lakhs only) to the Complainant Department by creating false documents as he did not bring on record any evidence to show that the payments made to the Government Treasury were reflected in online Tax Accounting System and thus, had dodged the Department. The Board was of the view that the manner in which the Respondent had acted to favour his client is clearly unbecoming of a Chartered Accountant and by his such conduct, he has certainly brought disrepute to the profession. Accordingly, the Board held the Respondent guilty in respect of the charge alleged.

CONCLUSION:

6. The Board of Discipline, in view of the above, is of the considered view that 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 said Act.

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

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

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

DATE: 10th February 2023

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सही प्रतिलिपि होने के लिए प्रमाणित
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गीता अनिरुध कुमार / GEETHA ANIRUDHA KUMAR
कार्यकारी अधिकारी / Executive Officer
अनुशासनात्मक विभाग / Disciplinary Directorate
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