



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

[PR-350/2020/DD-354/2020/BOD/656/2022]

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. Elayaperumal (M.No.028089)

No.7, Pillaiyar Koil Street, Near Sivan Koil, Sekkalai, Karaikudi 33,
Tamil Nadu -630002.

....Complainant

-Vs-

CA. Bharadhwaj D. (M. No. 220529)

No.5, South First Lane, Arunachalam Chettiar Street,
Sekkalai, Karaikudi 33,
Tamil Nadu-630002.

....Respondent

[PR-350/2020/DD-354/2020/BOD/656/2022]

MEMBERS PRESENT (through video conferencing):

CA. Rajendra Kumar P (Presiding Officer)

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

CA. Priti Savla, Member

Date of hearing and passing Order: 4th December 2023

1. The Board of Discipline vide Findings dated 5th October 2023 was of the view that **CA. Bharadhwaj D. (M. No. 220529)** is guilty of "Professional Misconduct" falling within the meaning of Item (8) of Part-I of the First Schedule of the Chartered Accountants Act, 1949.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Bharadhwaj D.** and communication dated 29th November 2023 was addressed to him thereby granting him an opportunity of being heard on 4th December 2023 which was exercised by him by being present through video conferencing. He confirmed the receipt of the Findings of the Board and concurred with the same. He also requested the Board to take a sympathetic view in the case keeping in view of his age.
3. Thus, upon consideration of the facts of the case, the consequent misconduct of **CA. Bharadhwaj D. (M. No. 220529)** and keeping in view his representation before it, the Board decided to impose a Fine of Rs.25,000/- (Rs. Twenty Five Thousand only) upon him and also warned him to be more cautious in future in complying with the Rules and the Regulation of ICAI.

Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

Sd/-

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

सही प्रतिलिपि होने के लिए प्रमाणित है।
Certified to be true copy
नीलम पुंडीर / Neelam Pundir
अतिरिक्त कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनसूचक निदेशालय / Disciplinary Directorate
The Institute of Chartered Accountants of India
आरवलीसवला / Aravali Savla
CA. Priti Savla
ICAI Bharatpur

Sd/-

CA. Priti Savla
(Member)

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-350/2020/DD-354/2020/BOD/656/2022]

CORAM: (Present in Person)

CA. Rajendra Kumar P, Presiding Officer

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

CA. Priti Savla, Member

In the matter of:

CA. P. Elayaperumal (M.No.028089)

Chartered Accountant

No.7, Pillaiyar Koil Street, Near Sivan Koil,

Sekkalai, Karaikudi 33

Tamil Nadu -630002.

....Complainant

Versus

CA. Bharadhwaj D (M.No. 220529)

Chartered Accountant

No.5, South Frist Lane, Arunachalam Chettiar Street,

Sekkalai, Karaikudi 33

Tamil Nadu -630002.

..... Respondent

DATE OF FINAL HEARING : 16th June, 2023

PLACE OF FINAL HEARING : Chennai

PARTIES PRESENT (in person):

Complainant : CA. P. Elayaperumal

Counsel for Respondent : Shri B. Ramana Kumar, Advocate

FINDINGS:

CHARGES ALLEGED:

1.1 The Complainant had been handling the Tax Audit assignment for Mr. R M. Subramanian and Mr. V R. Ramaiah (hereinafter collectively referred to as "Clients") respectively for AY

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1997-98 to 2018-19 and alleged that Respondent accepted the position as Tax Auditor for the said clients for the AY 2019-20 previously held by the Complainant without first communicating with him in writing.

- 1.2 The Respondent handled more Tax Audit cases than the threshold limit fixed by the Council of the Institute of Chartered Accountants of India i.e., Respondent violated the modified Council's Guidelines No.1-CA (7)/02/2008 dated 08th August 2009.

The Board noted that the Director(Discipline) In his Prima Facie Opinion held the Respondent prima facie Guilty of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 only in respect of the charge specified at para 1.1 above and the said view had been accepted by the Board. Accordingly, the conduct of the Respondent was examined in respect of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 only in respect of the charge specified at para 1.1 above.

BRIEF OF PROCEEDINGS HELD:

- 2.1 The Board at its meeting held on 19th April 2023 noted that the Counsel for the Respondent was present in person before it. However, neither the Complainant/their authorised representative was present before it nor was there any intimation as regards his non-appearance despite the due service of Notice for hearing. Since the case was fixed for hearing for the first time, keeping in view the principle of natural justice the Board adjourned the hearing in the case to provide a final opportunity to the Complainant to be present before it at the next date of hearing.
- 2.2 Thereafter, the Board at its meeting held on 16th June 2023 noted that the Complainant and the Counsel for the Respondent were present in person before it. Thereafter, the Complainant was put on Oath. The charges alleged against the Respondent were taken as read with the consent of the parties present. The Complainant and the Counsel for the Respondent made their respective submissions to substantiate their case 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 SUBMISSIONS OF THE RESPONDENT:

3. The Respondent in his defence, inter-alia, submitted as under:
 - 3.1 The Complainant is exploiting the fact that he is not able to prove the conversations he had with him over the phone and personally also which he is not able to prove as he does not have any record or acknowledgement for the same.
 - 3.2 The clients were transferred to him in 2019 and he had performed the audit for 31.3.20219 and 31.3.2020 before the complaint was even made by the Complainant. Thus, the Complainant preferred to make the complaint after 18 months i.e. 5.11.2020 only through E-Form-I.
 - 3.3 If the statement of the Complainant is true and correct, he should have filed the complaint immediately after 2019 audit itself, as the clients would not have come to him and when he or his office contacted them, they would have talked about the change. In fact, this change was communicated to him by the Respondent in April/May 2019 itself and thus he did not bother to check with the clients.
 - 3.4 The Respondent brought on record Affidavits from the two clients which prove the fact that the complainant was well aware of the change and did not object in 2019 itself before the two audits were done by him. The Complainant is simply harping on a technical issue of acknowledgement of communication of the change of auditor.
 - 3.5 No audit fee was payable in 2018 in the Balance Sheet of the respective clients which proves that the Complainant has taken advance Fees, as is his practice. There was no damage caused to him by the change of auditor as all his previous Fees have been settled.
 - 3.6 The communication was never casual. Except for the acknowledgment from Complainant, the Respondent has done all the requirements in letter and spirit. So much so that the communication was made in modes more than the mandated requirement by having a joint meeting with the respective clients also. It is important to see the substance over form and not the fact that the acknowledgment is not received by him or given by the Complainant.

OBSERVATIONS OF THE BOARD:

- 4.1 As regard the charge that the Respondent failed to communicate in writing with the Complainant being the retiring Auditor before acceptance of the appointment as the Tax

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auditor of Clients for the A.Y. 2019-20, the Board took into view the requirement of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949 which provides as under:

"a Chartered Accountant in practice shall be deemed to be guilty of Professional Misconduct, if he-

Accepts a position as auditor previously held by another Chartered Accountant or a certified auditor who has been issued certificate under the Restricted Certificate Rules, 1932 without first communicating with him in writing."

The Board observed that there are two essential requirements under Item (8) of Part I of the First Schedule to The Chartered Accountant Act, 1949 which are as follows:

- i. The communication should be prior to the acceptance of the appointment as the auditor.
- ii. The communication should be in writing.

4.2 The Board also noted that as per the Code of Ethics, 2009:

"The Council has taken the view that a mere posting of a letter under certificate of posting is not sufficient to establish communication with the retiring auditor unless there is some evidence to show that the letter has in fact reached the person communicated with. A Chartered Accountant who relies solely upon a letter posted under certificate of posting therefore does so at his own risk. The view taken by the Council has been confirmed in a decision by the Rajasthan High Court in J.S. Bhati vs. The Council of the Institute of the Chartered Accountants of India and another. (Pages 72-79 of Vol. V of Disciplinary Cases published by the Institute – Judgement delivered on 29th August, 1975). The following observations of the Court are relevant in this context:-

"Mere obtaining a certificate of posting in my opinion does not fulfill the requirements of clause (8) of Schedule I as the presumption under Section 114 of the Evidence Act that the letter in due course reached the addressee cannot replace that positive degree of proof of the delivery of the letter to the addressee which the letters of the law in this case require. The expression 'in communication with' when read in the light of the instructions

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contained in the booklet 'Code of Conduct' cannot be interpreted in any other manner but to mean that there should be positive evidence of the fact that the communication addressed to the outgoing auditor by the incoming auditor reached his hands. Certificate of posting of a letter cannot, in the circumstances, be taken as positive evidence of its delivery to the addressee."

Further, the Code of Ethics – 2009 also provides as below:

Members should therefore communicate with a retiring auditor in such a manner as to retain in their hands positive evidence of the delivery of the communication to the addressee. In the opinion of the Council, communication by a letter sent "Registered Acknowledgement due" or by hand against a written acknowledgement would in the normal course provide such evidence (emphasis provided).

- 4.3 In the instant case, the Board noted that the Respondent brought on record two letters dated 14th April 2019 and 15th May 2019 addressed by him to the Complainant which were sent through ordinary post wherein he sought grievance of the Complainant regarding his acceptance of the Tax Audit of the two clients namely Mr. R M. Subramanian and Mr. V R. Ramaiah for the AY 2019-20. The Complainant categorically denied having received these letters both in his written submissions and also during the course of hearing.
- 4.4 The Board further noted that the Respondent brought on record Affidavit dated 17th November 2022 from the clients to the effect that the clients alongwith the Respondent personally visited the Complainant, they conveyed their wish to appoint the Respondent and as there was no Fees payable to him till the AY 2018-19, the Complainant happily handed over the records to him.
- In this regard, the Board was of the view that the onus to communicate with the previous auditor is on the incoming auditor and the same cannot be passed on to the client.
- 4.5 Further, as regard the submission of the Respondent that the complaint in Form 'I' had been made by the Complainant on 5th November 2020 i.e. after 18 months of the transfer of the clients to him in 2019, the Board observed that the Complainant has not given any

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justification for filing the complaint with the Disciplinary Directorate after an unreasonable time gap. However, in the absence of any express provision as regard admissibility of complaint on the said ground in the Chartered Accountants Act 1949 or the Rules framed thereunder, the Board was constrained not to consider the same while arriving at its Findings.

- 4.6 Thus, the Board was of the view that it is evident that the Respondent has not been able to bring on record any conclusive evidence to substantiate that he communicated in writing with the Complainant being the previous auditor prior to the acceptance of the Tax Audit of the clients for the AY 2019-2020. Accordingly, the Board viewed that the Respondent has clearly failed to communicate with the Complainant being the previous auditor prior to the acceptance of the Tax audit of the clients for the AY 2019-20 in the manner as stated in the provisions of Item (8) of Part I of First Schedule of the Chartered Accountants Act, 1949 and is thus Guilty in respect of the charge alleged.

CONCLUSION:


5. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

Sd/-
CA. Rajendra Kumar P
(Presiding Officer)

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

Sd/-
CA. Priti Savla
(Member)

DATE: 05-10-2023

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

निषु शर्मा / Nishu Sharma
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
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