

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/G/208/2017-DD/204/2017/BOD/463/2018]**

**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:**

Shri Amit Kumar Singh  
ADIT (Inv), Unit-6,  
Aayakar Bhawan, Annexe Building  
P-13, Chowringhee Square,  
2nd Floor  
KOLKATA – 700069.

.....Complainant

Versus

CA. Subhash Kumar Agarwala... (M. No. 074057)  
8, Camac Street,  
Shantiniketan Building  
6th Floor, Room No. 606,  
KOLKATA – 700017.

.....Respondent

DATE OF FINAL HEARING : 28<sup>th</sup> July 2023

PLACE OF FINAL HEARING : Kolkata

**PARTIES PRESENT (in person)** : None

**FINDINGS:**

**CHARGE ALLEGED:**

1. The Respondent formed various papers/shell entities/Companies for sole purpose of providing pre-arranged accommodation entries of share capital, share premium and

unsecured loans, which was admitted by him in his Statement on Oath before the Income Tax Authorities on two occasions.

**BRIEF OF PROCEEDINGS HELD:**

2.

S. No.	Date of Hearing(s)	Status of Hearing(s)	Compliance of direction, if any, given by the Board
1.	31 <sup>st</sup> May, 2019	Part heard and adjourned with the direction to the Complainant to provide the corroborative evidence in the case alongwith the list of the witnesses.	-----
2.	16 <sup>th</sup> August, 2019	Adjourned with the direction to write to Chairman, CBDT about non-appearance of any officer from the Complainant Department and request for arranging of their appearance at the time of next hearing.	-----
3.	25 <sup>th</sup> September, 2019	Part-heard and adjourned with the direction to the Complainant Department to provide the following documents/information:  i.) Who were the ultimate beneficiary (ies) of M/s Kushal Group of Companies.  ii.) Relationship/association of the Respondent with the companies	The Complainant Department did not submit their response.

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		<p>mentioned on page no. C-10 and C-11 of the Prima facie opinion.</p> <p>iii.) Who provided benefit to these Companies.</p>	
2.	29 <sup>th</sup> December, 2022	<p>Part-heard and adjourned with the direction to Complainant Department to provide the following documents/information with a copy to the Respondent to provide his comments thereon, if any:</p> <p>i. Who was the ultimate beneficiary (ies) of M/s Kushal Group of Companies.</p> <p>ii. Relationship/ association of the Respondent with the companies mentioned on page no. C-10 and C-11 of the Prima facie opinion.</p> <p>iii. As to who provided benefit to these Companies.</p> <p>iv. Statement on Oath of the Dummy Directors of the company like Sh. Birendra Raut, Sh. Ritesh More, Sh. Parinay Kumar Sinha as referred to during the course of hearing.</p> <p>v. Assessment Orders of the Respondent in which commission income has been added to his income.</p>	<p>The Complainant Department in their response provided a copy of the following:</p> <p>(a) Statement of Sh. Birendra Raut recorded before the Income Tax Department on 18<sup>th</sup> September 2014.</p> <p>(b) Statement of Sh. Parinay Kumar Sinha recorded before the Income Tax Department on 18<sup>th</sup> September 2014.</p> <p>(c) Statement of Sh. Ritesh More recorded before the Income Tax Department on</p>

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		vi. Copy of the Order passed in appeal filed by the Respondent against his Assessment Order wherein commission income has been added to his income.	<p>18<sup>th</sup> September 2014.</p> <p>(d) Statement of the Respondent recorded before the Income Tax Department on 18<sup>th</sup> September 2014.</p> <p>(e) Copy of the Order dated 23<sup>rd</sup> March 2017 and 21<sup>st</sup> March 2017 passed by the Commissioner of Income Tax(Appeals), Kolkata for the AY 2007-08 to 2011-12 and AY 2013-14 respectively in the case of the Respondent.</p>
3.	3 <sup>rd</sup> May, 2023	Part-Heard and adjourned with the direction to the Complainant Department to provide evidence (with a copy to the Respondent) to the effect	The Complainant Department did not submit their response.

		that steps have been taken by them to collect the tax from the Respondent in respect of the income which they purport has been earned by him on account of alleged transactions and the information sought at earlier hearing(s) to the extent not provided. Also, whether any of the family members of the Respondent are directors in the alleged companies and any action taken by the Complainant Department against them.	
4.	28 <sup>th</sup> July 2023	Hearing concluded on the basis of documents and submissions on record as neither the Complainant/ Respondent or their authorised representative was present nor was there any intimation as regards their non-appearance despite the due service of the Notice for hearing and the parties to the case had been given several opportunities to present their case before the Board.	-----

**BRIEF SUBMISSIONS OF THE RESPONDENT:**

3. The Respondent in his defence, inter-alia, submitted as under:-
  - 3.1 The entire complaint of Complainant vests on the two Statements purportedly given by the Respondent. Those two statements have been duly retracted by him being involuntary, false and obtained under threat, coercion and duress and upon their dictate. Other than

these two statements the Complainant do not have any independent piece of evidence to support their case.

- 3.2 The complaint does not reveal under Row-5 of FORM I "the corresponding clause / part of the relevant Schedule" or the "clauses / part under which the alleged acts of commission or omission both would fall". Thus, the Complaint is bad in law and is liable to be set aside and suffers from an illegality which was first to be scrutinized under Clause (2) of Rule 5 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 (hereinafter referred to as "the Rules") and then was required to be corrected as per Clause (5) of the Rules. This illegality cannot be corrected at a later stage.
- 3.3 The Disciplinary Directorate was without any power to presume what the clauses/ part of the Schedule would apply to the given facts. Without specifying the clause/ part of the Schedule to which the Respondent has to defend himself against; it was not possible to defend against the allegations. It was only when the Respondent had received the copy of the Prima Facie Opinion that the Respondent came to learn that the offence alleged against him was under Clause II of Part IV of the First Schedule and the Disciplinary Directorate had held him guilty without giving him sufficient opportunity to defend himself. The Respondent has lost his valuable right of defence in this case properly owing to omission of the clause / part of the Schedule to which he is to defend himself. This illegality was not even sought to be corrected at a later stage.
- 3.4 The decision of the Hon'ble Supreme Court in Vinod Solanki vs. Union of India (2008) 16 SCC 537 has no role to play in the present facts of the present case. The Respondent craves leave to refer to the decisions of the Hon'ble Supreme Court and Hon'ble High Courts in support of his case at the time of hearing of this application, if necessary.

**OBSERVATIONS OF THE BOARD:**

On perusal of the documents and submissions on record, the Board observed that the Respondent raised certain technical objections with regard to the admissibility of the case and decided to deal with them before arriving at its Findings.

- 4.1 As regard the objection of the Respondent that specific clause of the misconduct had not been defined by the Complainant, the Board was of the view It is trite that a Complainant is required as per law to state the allegations which are to form a factual foundation for an Adjudicating Authority to exercise jurisdiction and even if an incorrect provision of law/no clauses is mentioned by the Complainant in FORM I, that alone cannot be a ground to

dismiss a complaint if otherwise the Authority has the jurisdiction to entertain the complaint.

Further, though the provision of Rule 3 is couched in a "mandatory form" by use of words such as "shall" and appear to be mandating a procedure that must be necessarily followed. However, mere use of language which suggests or purports to suggest a "mandate" may not alone be sufficient to regard a procedural rule to be mandatory to the extent that its non-compliance could vitiate the entire proceeding.

While coming to the said view the Board took into view the following observations of the Hon'ble Supreme Court in the matter of Uday ShankarTriyar v. Ram Kalewar Prasad Singh and Anr. (Reported in AIR 2006 SC 269) as under:

*"Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use."*

Thus, non-mentioning of clauses can at the highest be treated as "technical defect." Infact, the procedure to be adopted in case of defective complaint is that the defect, if pointed out, and not cured by the complainant, it is incumbent upon the Director (Discipline) to form a prima facie opinion of no case and recommend its closure. However, the Board of Discipline is vested with discretion to ignore the recommendation, if it deems fit, and proceed further with the matter.

The onus to formulate a prima facie opinion as to the misconduct rests with the Director (Discipline) and therefore, premised on the pleadings filed which contains the allegations and documents placed on record, it is the Director (Discipline) which has to first formulate a prima facie opinion on the alleged misconduct.

Therefore, notwithstanding the assertions as to the particular clause of misconduct by a Complainant, the Director (Discipline) shall, after perusing the material available, conclude as to existence or otherwise of the misconduct alleged. This is also apparent from the provisions of various sub clauses of Rule 9(2)(a) of the Misconduct Rules, 2007 , which require the Director(Discipline) to place the matter before the Board of Discipline , if the misconduct alleged falls within the First Schedule and before the Disciplinary Committee , if the alleged misconduct falls within the Second Schedule or both under the First and Second Schedule. This also supports the view that the sifting of the allegations to identify the clauses of misconduct is to be performed by the Disciplinary Directorate.

This issue can also be addressed from the perspective of the status of the complainant. The requisite provision in the statute or under the Rules does not prescribe as to who can file a complaint under the provisions of the Act alleging misconduct by a member. Therefore, the Complainant can be a statutory authority, a member of the Institute who is well versed with the provisions of the Act or even a member of public who may not be familiar with the provisions of the Act. In such a scenario, to give a pedantic interpretation to the provisions of the Act and the Rules making it incumbent on a Complainant to specify clauses of misconduct would be denying the remedy otherwise available under the statute.

If the allegations stated in the complaint do not fall within any specified clauses of professional misconduct, the same may however be a case of "other misconduct" and the ICAI would be within jurisdiction to proceed further on the allegations. Therefore, non-mentioning of clauses pertaining to "misconduct" does not in any manner vitiate the proceedings.

- 4.2 As regard the charge alleged, the Board noted the Complainant Department had recorded two Statements of the Respondent on Oath before ADIT (Inv.), Unit (6), Kolkata in connection with an enquiry conducted by Directorate of Income Tax (Investigation), Kolkata under section 131 of the Income Tax Act, 1961 on 1.12.2012 and 18.09.2014 respectively wherein he, inter-alia, deposed as under:

**Statement dated 1.12.2012:**

*"Q.3 Please state your profession/occupation."*



*Ans. My occupation is business and profession as F.C.A.*

*Q.5 Who are the Directors of the companies as mentioned in the previous question? Please give their contact details.*

*Ans. Some of the persons associated with these companies are Pravin Chand, Shyam Sunder Agarwal, Rajesh Agarwal, R.K. Maheswari, Bajrang Sultania in the capacity of Directors in various group of companies. These companies are owned and controlled by me. This information will be supplied later on."*

**Statement dated 18.09.2014:**

*Q.5 What is your source of income?*

*Ans. My main source of income is from commission for providing accommodation entries through jama kharchi/shell companies to various beneficiaries froming "jama-kharchi companies and selling them in lieu of commission.*

*Q.7 Please explain the nature of business done by you.*

*Ans. My main business is providing accommodation entries through jama kharchi/shell companies to various beneficiaries in lieu of commission. Although the companies formed by me have different addresses but they are being maintained from my offices located at 13C, Bechu Chatterjee Street, Kolkata-700009, 16 Ganesh Chandra Avenue 7<sup>th</sup> floor, Kolkata-700013. Earlier the address of 85, Metcafe Street, Kolkata-700013 was also used by me for my different paper companies."*

- 4.3 The Board further noted that the Respondent retracted the above two Statements by way of a notarized sworn Affidavit dated 3.12.2012 and 19.09.2014 respectively.
- 4.4 The Board also noted that the Complainant Department brought on record a copy of the Statement recorded before the Income Tax Department on 18<sup>th</sup> September 2014 of the following alleged dummy directors in the companies allegedly managed and controlled by the Respondent:

*SV*

- (a) Sh. Birendra Raut  
 (b) Sh. Parinay Kumar Sinha  
 (c) Sh. Ritesh More

4.5 The Board further noted that the Complainant Department brought on record the copy of the Orders dated 23<sup>rd</sup> March, 2017 and 21<sup>st</sup> March, 2017 passed by the Commissioner of Income Tax(Appeals), Kolkata for the AY 2007-08 to AY 2011-12 and AY 2013-14 respectively against the Assessment Orders dated 31<sup>st</sup> March, 2015 in the case of the Respondent. The Board noted that although the Complainant Department did not bring on record the copy of the Assessment Orders against which the appeal had been filed by the Respondent, however, on perusal of the said Appellate Orders, the Board noted that the Assessing Officer made the following addition in the hands of the Respondent for the following Assessment Years and the Appeal filed by the Respondent had been allowed:

S. No.	Assessment year	Addition of Income	Reason for Addition	Income Tax Liability (Amount)
1.	2007-2008	Rs. 3,00,000/-	Commission income by providing entries on presumptive basis.	Rs.1,34,634/-
2.	2008-2009	Rs. 2,00,000/-	Commission income by providing entries on presumptive basis.	Rs.96,055/-
3.	2009-2010	Rs. 3,00,000/-	Commission income by providing entries on presumptive basis. Further, there was a disallowance of depreciation to the tune of Rs. 5,00,000/-.	Rs.5,22,899/-



4.	2010-2011	Rs. 4,00,000/-	Commission income by providing entries on presumptive basis.	Rs.74530/-
5.	2011-2012	Rs. 2,00,000/-	Commission income by providing entries on presumptive basis. Further, there was a disallowance of depreciation to the tune of Rs. 1,54,386/-.	Rs. 79754/-
6.	2013-2014	Rs. 2,75,02,192/-	Addition on account of income from transaction in gold and silver. Further, there was a disallowance of depreciation to the tune of Rs. 1,11,541/-.	Rs. 1,46,05,061/-

4.6 Thus, on a detailed perusal of the submissions and documents on record, the Board noted that the primary evidence which the Complainant Department has brought on record for the charges alleged against the Respondent is the copy of his own Statement recorded on 1<sup>st</sup> December 2012 and 18<sup>th</sup> September 2014 which had been subsequently retracted by him and the Statement of the alleged dummy directors in the companies allegedly managed and controlled by the Respondent recorded on 18<sup>th</sup> September 2014 before the concerned official of the Complainant Department. The appeal filed by the Respondent against the Assessment Orders(s) making an addition of commission income in his hands for the AY 2007-08 to AY 2011-12 and AY 2013-14 had been allowed by the Commissioner of Income Tax(Appeals), Kolkata. Beyond that, despite opportunities given to the Complainant Department to substantiate the charges alleged against the Respondent, the Complainant Department failed to bring on record any conclusive evidence to substantiate the charge alleged against the Respondent that he formed various shell companies for the

purpose of providing accommodation entries in lieu of commission. In view of the same, the Board held the Respondent NOT GUILTY in respect of the charge alleged.

**CONCLUSION:**

5. Thus, in conclusion, in the considered opinion of the Board, the Respondent is NOT 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. Accordingly, the Board passed Order for closure of the case in terms of the provisions of Rule 15 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

Sd/-

**CA. Rajendra Kumar P**  
**(Presiding Officer)**

Sd/-

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

Sd/-

**CA. Priti Savla**  
**(Member)**

**DATE:06-12-2023**

सही प्रतिलिपि होने के लिए प्रमाणित  
Certified to be true copy

*Amol*  
गीता अनिरुध कुमार / GEETHA ANIRUDHA KUMAR  
कार्यकारी अधिकारी / Executive Officer  
अनुशासनोत्पन्न विभाग / Disciplinary Directorate  
भारतीय चार्टर्ड अकाउंटेंट्स संघ  
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