



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

[PR-57/2020-DD/81/2020/BOD/611/2022]

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. Lokesh Mohan
KA 32, Kavi Nagar,
Ghaziabad – 201002.

.....Complainant

-Vs-

CA. Sanjay Kumar (M. No.512062)
A 349-B, Second Floor,
Chattarpur Enclave,
Phase II,
New Delhi – 110074.

.....Respondent

[PR/57/20/DD/81/2020/BOD/611/2022]

MEMBERS PRESENT (through video conferencing):

CA. Rajendra Kumar P, Presiding Officer
Ms. Dolly Chakrabarty (IAAS, ret.), Government Nominee
CA. Priti Savla, Member

Date of Hearing and passing Order: 17th December 2023

1. The Board of Discipline vide its Findings dated 5th October 2023 was of the view that CA. Sanjay Kumar (M. No.512062) 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.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Sanjay Kumar and communication dated 12th December 2023 was addressed to him thereby granting him an opportunity of being heard on 17th December 2023 which was exercised by him by being present through video conferencing. He confirmed receipt of the Findings of the Board. He also made his written representation on the Findings of the Board.
3. Thus, upon consideration of the facts of the case, the consequent misconduct of CA. Sanjay Kumar (M. No.512062) 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.

Sd/-

CA. Rajendra Kumar P
(Presiding Officer)

Sd/-

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

Sd/-

CA. Priti Savla
(Member)

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

नीलम पुंडीर/Neelam Pundir
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, किराया नगर, शहदरा, दिल्ली-110032
ICAI Bhawan, Kirana Nagar, Shandra, 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. : [PR-57/2020-DD/81/2020/BOD/611/2022]

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. Lokesh Mohan
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.....Complainant

Versus

CA. Sanjay Kumar (M. No.512062)
A 349-B, Second Floor,
Chattarpur Enclave,
Phase II,
New Delhi – 110074.

.....Respondent

DATE OF FINAL HEARING : 4th July, 2023
PLACE OF FINAL HEARING : New Delhi

PARTIES PRESENT

Complainant : CA. Lokesh Mohan along with his son
CA. Deepandhu Agarwal

Respondent : CA. Sanjay Kumar

FINDINGS:

CHARGES ALLEGED:

- 1.1 The Respondent accepted the Tax Audit of M/s Tirupati Trading Company (Proprietor Akshit Garg, PAN No. AHVPG7052J) and M/s Raj Kumar Akshit Kumar (PAN No. AACFR8600D) for the Financial Year 2018-19 without communicating in writing with the Complainant being the previous auditor. Both the above firms have hereinafter been collectively referred to as "Firms".

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- 1.2 The Respondent did not exercise due diligence, failed to report material misstatement, and had not disclosed material information in his Audit report.

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 first 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 only in respect of the first charge specified at para 1.1 above.

BRIEF OF PROCEEDINGS HELD:

2. At the time of hearing held in the case on 4th July 2023, the Complainant and the Respondent were present in person before the Board. Thereafter, the Complainant and the Respondent were put on Oath. On being asked by the Board as to whether the Respondent pleaded guilty in respect of the charge alleged against him, he replied in affirmative and said that he partly accepted his guilt. Thereafter, the Respondent and the Complainant made their respective submissions before the Board. On consideration of the documents and submissions, thus, on record, the Board concluded the proceedings in the case.

BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE:

A. RESPONDENT

3. The Respondent in his defence, inter-alia, stated as under:
- 3.1 The Respondent conducted the Tax Audit of the aforesaid 2 Firms for the Financial Year 2018-19. It came to the Respondent's attention, through communication and information received from the clients that the Complainant, who acted as the Tax Auditor for the aforesaid firms during the Financial Year 2017-18 was not eligible to be appointed as a Tax Auditor in accordance with the provisions of the Income Tax Act 1961.
- 3.2 The Respondent drew attention to the explanation to subsection (2) of Section 288 of the Income Tax Act 1961, which defines the term "accountant." As per the explanation, individuals engaged in financial transactions with the clients are not eligible to be appointed as Tax Auditors.

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- 3.3 Despite Respondent's attempts to obtain a No Objection from the Complainant, as required, the Complainant did not respond to the clients and did not conduct any audit for the Financial Year 2018-19.
- 3.4 The clients have duly paid all professional fees to the Complainant up to the Financial Year 2017-18. However, due to Complainant's irresponsible behaviour and lack of responsiveness, the clients no longer wished to continue with him as their Tax Auditor.
- 3.5 The clients filed a written complaint against the Complainant with the Institute of Chartered Accountants of India (ICAI) on October 17, 2019, referencing PPR/MISC/523/2019, which highlights the alleged wrongdoings carried out by the Complainant.

B. COMPLAINANT

4. The Complainant raised objections on the submission of the Respondent on the following grounds:-
- 4.1 The reply is unsigned and is not admissible in any Court of Law.
- 4.2 No evidence of any request letter seeking NOC from previous auditor has been submitted with the unsigned reply of the Respondent. In fact, the Respondent has categorically submitted in his reply letter dt. 06.07.2020 as under:-
- "By considering the above factors, it is established that we do not require to obtain the no objection certificate and we don't require to communicate to the previous auditor as Mr. Lokesh Mohan was not the eligible tax auditor for conducting tax audit of the above clients."*
- Thus, the reply of the Respondent is self contradictory.
- 4.3 The Respondent is silent on the issues raised in Complainant's letter dt. 03.08.2020 and the necessary aspect of conducting Tax Audit and he is trying to wander on some other issue.
- 4.4 No new fact has been highlighted by the Respondent in his further submissions.
- 4.5 It is stated by the Respondent that it has come to his attention through communication and information received from the client that the Complainant was not eligible to be appointed as Tax Auditor. However, the Respondent has not attached the communication of the client and basis taken by the client for not appointing the Complainant as a Tax Auditor.

4.6 The Respondent has not attached the evidence of payment of all the due fees of the Complainant.

OBSERVATIONS OF THE BOARD:

5.1 As regard the charge that the Respondent accepted the Tax Audit of the Firms for the Financial Year 2018-19 without first communicating in writing with the Complainant being the previous auditor, 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 auditor.
- ii. The communication should be in writing.

Besides, the “Code of Ethics (2009 edition)” for the Chartered Accountants emphasis that professional courtesy alone is not the major reason for requiring a member to communicate with the existing accountant who is member of the Institute or a certified auditor. The object of the incoming auditor, in communicating with the retiring auditor, is to ascertain from him whether there are any circumstances which warrant him not to accept the appointment.

Also, as regard communication with the Previous Auditor is concerned, as per the Code of Ethics 2009, the incoming Auditor should always communicate with the retiring auditor in such a manner as to retain in his 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 normal course provide such evidence.

5.2 The Board noted that the Respondent categorically accepted during the hearing that he accepted the assignment of Tax audit of the aforesaid Firms for the Financial Year 2018-19 without seeking the no objection of the Complainant.

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- 5.3 The Board also noted that in his written submissions submitted at the Prima Facie stage, the Respondent stated that he accepted the assignment of the audit on the assurance from the proprietors of the firms to get no objection from the Complainant and accordingly he did not communicate with the Complainant before signing and issuing audit report.
- 5.4 Thus, on perusal of the submissions and documentary evidence on record, the Board viewed that the onus to communicate with the previous auditor is on the incoming auditor and the same cannot be passed on to the auditee. Further, in view of the admission by the Respondent in respect of the charge of non-communication with the previous auditor prior to the acceptance of Tax audit of the firms for the F.Y. 2018-19 as alleged in the instant complaint, the Board held the Respondent guilty in respect of the charge alleged.
- 5.5 The Board also noted that during the course of proceedings in the case, the Respondent raised certain allegations against the Complainant. However, the same were not taken into view by the Board as the instant complaint had been filed by the Complainant against the Respondent and accordingly, the conduct of the Respondent had been examined by the Board.

CONCLUSION:


6. 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, retd.)
(Government Nominee)

Sd/-
CA. Priti Savla
Member

DATE: 05-10-2023

सही प्रतिलिपि का प्रमाण है।
Certified to be true copy.

अरुण कुमार / Arun Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशक/ Disciplinary Director
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