

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/224/2017-DD/161/2018/BOD/599/2021]

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. Bhola Ram Dewasi

DDIT (Inv.), Unit-4(2)

Aayakar Bhawan, Annexure Building, P-13

Chowringhee Square, 5th floor,

Kolkata-700069.

.....Complainant

Versus

CA. Virendra Kumar Keshari (M. No. 055994)

M/s V K Keshari & Company,

Chartered Accountants

23A, Netaji Subhash Road, 8th Floor, Room no. 6A,

Kolkata-700001.

.....Respondent

DATE OF FINAL HEARING : 27th July 2023

PARTIES PRESENT(in person):

Counsel for the

Complainant Department

: Shri Shallendra Prasad Kanaujia, Advocate

Counsel for the Respondent

: CA. A. P. Singh

FINDINGS:

CHARGE ALLEGED:

1. It is alleged that the Respondent has been found involved in the activities of providing/facilitating, formation/running, control and Management of bogus shell/paper entities/Companies having no business activities and carrying out the

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activities of providing of accommodation entries to various beneficiaries in lieu of commission and thereby facilitated evasion of taxes.

BRIEF OF PROCEEDINGS HELD:

2.

S. No.	Date of Hearing(s)	Status of hearing(s)
1	3 rd May 2023	Part heard and adjourned with the direction to give final opportunity to the Complainant Department to provide evidence (with a copy to the Respondent) to the effect 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. 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. The Complainant Department did not submit any response to that effect.
2	27 th July, 2023	Heard and concluded.

BRIEF SUBMISSIONS OF THE RESPONDENT:

3. The Respondent in his defence, inter-alia, submitted as under: -
 - 3.1 The Director (Discipline) has been constrained to proceed in the matter without the Complainant Department having filed rejoinder to the Respondent's statement dated 09th July 2018. This amounts to admission of the contents of his written statement dated 09th July 2018 by the Complainant Department.
 - 3.2 The Complainant Department filed a response vide letter dated 22nd January 2019 stating that the statement was typed in front of the deponent and recorded exactly what the deponent had said in response to the questions asked, which the Respondent denied by a sworn Affidavit dated 17th June 2014, being Affidavit of retraction and

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continue to deny. The averment has been made by an Officer different from the one who recorded the deposition. The Department has abstained from filing an Affidavit of the Officer who recorded the Respondent's purported deposition in question. In respect of the other requisitions made by the Directorate, evasive replies have been given without submitting the requisitioned documents. This clearly shows that Department has no material evidence to prove their frivolous and mischievous allegations.

- 3.3 Neither the Respondent nor any of his family members are associated with Mahabir group of companies as a director / proprietor / auditor. No material has been brought on record to contradict the said averment.
- 3.4 The Director (Discipline) has formed his opinion on the basis of the Respondent's deposition on 12th June, 2014 by DDIT (Inv). The said statement has no longer any evidentiary value in as much as the said statement was retracted vide a sworn Affidavit dated 17th June 2014 (also admitted in the prima facie opinion at para 9.4). In the said Affidavit of retraction, it has been clearly stated by the Respondent that he was intimidated, threatened and forced to sign his purported statement running into seven pages. Even a certificate under his signature was recorded at the end of the statement forcefully. A sworn Affidavit has great evidentiary value and cannot be brushed aside lightly. It was so held in by the Hon'ble Supreme Court in Mehta Parekh and Co 30 ITR 181 (SC)/AIR 1956 SC 554.
- 3.5 The Prima Facie Opinion also places reliance on the statement / deposition given by Sri Raju Kesri and Sri Krishna Kumar Parsuramka. These statements also have no evidentiary value in as much as the purported adverse statements were obtained behind the Respondent back without affording him any opportunity to cross examine the deponents.
- 3.6 Sri Krishna Kumar Parsuramka, when approached by the Respondent, has stated by way of a sworn Affidavit that the DDIT (Inv) intimidated, threatened and ultimately forced him to sign a statement wherein pre-drafted questions as well as pre-drafted replies were already typed.
- 3.7 The Prima Facie Opinion is not based on proper evidence / material and evidence which is not admissible in law (untested oral evidence). Section 131 of the Income Tax Act, 1961 empowers the Income Tax Authority in a similar manner as the Court is empowered under the Code of Civil Procedures, 1908. There is no evidence to suggest that the Income Tax authorities made any effort to require the Respondent to submit their books, investigate the matter, examine relevant evidence and individuals, or obtain necessary documentation to establish the Respondent's liability under the Income Tax Act. There are no documents presented by the Complainant Department in support of the allegations made. The Income Tax Department did not conduct any enquiry after the statements made by the Respondent. The Income Tax Department did not choose to exercise powers under Section 132A of the Income Tax Act, 1961 and call for books of accounts or any other information from the Respondent under Section 133

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of the Income Tax Act, 1961. This all clearly and evidently shows that the Complainant Department did not have any evidence apart from the Statement on Oath which were taken under pressure, and the same was withdrawn and retracted immediately. There was no corroborative evidence which was available with the Income Tax Department that could have corroborated with what was mentioned in the Statement of Oath. From this it is evidently clear, that the Income Tax Department has failed to create any sustainable charge against the Respondent.

- 3.8 The Director (Discipline) cannot hold the Respondent guilty under Item (2) of Part IV of First Schedule of the Chartered Accountants Act, 1949 because it requires opinion of the Council of ICAI that the Respondent had brought disrepute to the profession. In the present case, no opinion of Council has been provided to the Respondent.
- 3.9 The said item of the clause was never included by the Complainant and hence, the Director (Discipline) acted beyond jurisdiction.
- 3.10 The complaint filed itself was defective and was not in accordance with as envisaged in Rule 3 of the Rules. The same has not been taken into cognizance by the Director (Discipline).
- 3.11 The Director(Discipline) of the Institute of Chartered Accountants of India (ICAI) has conducted an analysis of various companies and concluded that these companies had the same directors as those mentioned in the Statement of Oath, which was retracted. However, the Director(Discipline) failed to consider a crucial fact that just because they were directors, it does not invalidate the statement on oath. The matter pertains to accommodation entries, not directorships. Moreover, when the statement on oath was retracted within four days, there is enough evidence to suggest that it was taken under undue pressure.

OBSERVATIONS OF THE BOARD:

4. 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 regards the objection of the Respondent regarding the opinion of the Council as stipulated in Item (2) of Part IV of the First Schedule, the Board relied on para 17 and 18 of the Order dated 18th October 2018 passed by the Hon'ble Appellate Authority in the Appeal no. 12/ICAI/2017 and 14/ICAI/2017 - Anil Kumar Aggarwal Vs. The Institute of Chartered Accountants of India and others and Radhey Shyam Bansal Vs. The Institute of Chartered Accountants of India and others as under:



"17. It is pertinent to note here that this Authority has already dealt with and decided this issue in the Appeals earlier namely Gyan Prakash Agarwal (Appeal No. 08/ICAI/2014), Rajiv Maheshwari (Appeal No. 05/ICAI/2014) and Sameer Kumar Singh Vs. ICAI (Appeal No. 07/ICAI/2014) and has held as under:- "15. Based on the above and by taking note of the written submissions made on behalf of the Institute of Company Secretaries of India, the Institute of Cost Accountants of India and the Institute of Chartered Accountants of India containing the detailed Page 9 of 14 analysis of the issue in question, we are of the considered view that the proper and correct interpretation which can be given to Clause (2) of Part-IV of the First Schedule to the respective Acts, in the light of the principles laid down and having regard to the case laws of various courts and further considering the basic objects, reasons and purpose of the amendment brought in the statutes as quoted above is that, 'Prima facie Opinion (PFO)' formed by the Director (Discipline) in all such complaints / information cases serves the purpose for proceeding further for taking disciplinary action against the errant members as in terms of the amended mechanism for conduct of cases, it is the Director (Discipline) who has to form the first Prima Facie Opinion for the disciplinary proceedings to be initiated. Therefore, the opinion of Council as is mentioned in the Clause (2) of Part-IV of the First Schedule to the Act has to be given a purposive meaning and has to be read in consonance with the letter and scheme of the enactment.

18. In our considered view, the same shall mutatis mutandis apply in both these Appeals and accordingly, we find no merit in this ground. Thus, we hereby reject this ground of Appeal as taken by the Appellants".

Hence, the issue had already been decided by the Hon'ble Appellate Authority, and therefore, there is no merit in the argument of the Respondent in this regard.

- 4.2 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 that 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

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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 suggest 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 Shankar Triyar 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.

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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.

- 4.3 As regard the charge alleged, the Board noted that the Complainant Department had recorded a Statement of the Respondent on Oath before DDIT (Inv.), Unit-IV(2), Kolkata in connection with an enquiry conducted by Directorate of Income Tax (Investigation), Kolkata under section 131 of the Income Tax Act, 1961 on 12.06.2014, wherein he, inter-alia, deposed as under:

"Q.6 Please explain the nature of business done by you."

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Ans. My main business is providing accommodation entries through "jamakharchi"/ 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 the following address:

23A, N.S. Road, 08th Floor, Room No. 6A, Kolkata-700 001.

Q7. Please state the names of the companies in which you and your family members are associated with as a director or a proprietor.

Ans. I am the one of the directors in the following companies:

1. Nakodar Finance Pvt. Ltd;
2. Aniruddh Motor & General Finance Pvt. Ltd;
3. A B Polypacks Pvt. Ltd;
4. Sankar Ferrous Pvt. Ltd'

My brother-in-law, Shri Raju Keshri is also one of the directors in the following companies:

- a. AB Polypacks Pvt. Ltd;
- b. Victor Vyapaar Pvt. Ltd;
- c. The India Ceramics Pvt. Ltd;
- d. Mahamaya Tradelink Pvt. Ltd;

Further, I would also like to mention that some of my friends and relatives are one of the directors of the following companies:

- i. Baviscon Commercial Pvt. Ltd;
- ii. Krishna Gopal Ore & Minerals Pvt. Ltd;
- iii. Sunder Metal Techno Pvt. Ltd;
- iv. Kamayani Sales Promotions Pvt. Ltd;
- v. Shree Hanuman Minerals Pvt. Ltd;

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Q8. Please state the names of the companies/proprietorship firm managed/controlled by you and also state who are the directors in these companies/proprietorship concerns.

Ans. As far as my memory goes, around fifteen to twenty companies are being controlled by me; the books of accounts of those companies are maintained in the computers in my offices. I will also provide separate list of all the companies controlled by me. Here, I would also like to mention that the other directors in all of these companies are dummy directors who are mostly my relatives and associates who lend their name for directorship in lieu of some remuneration which I provide them time and again. Some of the names are as under:

1. Shri Krishna Kumar Parsuramka;
2. Shri Saurav Choudhury;
3. Shri Raju Keshri;
4. Shri Bishnu Kumar Bawri;
5. Shri Shashikant Modi;

Q.10 In his statement made under oath on 12.06.2014, Shri Raju Keshri stated that as per your instruction, he has signed the papers and documents as a dummy director of AB Polypacks Pvt. Ltd., Victor Vyapaar Pvt. Ltd. The India Ceramics Pvt. Ltd. and Mahamaya Tradelink Pvt. Ltd. he has also stated that he had worked totally under your guidance and he has no idea about the said companies. Please offer your comment.

Ans. I am in control of AB Polypacks Pvt. Ltd. Victor Vyapaar Pvt. Ltd. The India Ceramics Pvt. Ltd. and Mahamaya Tradelink Pvt. Ltd. Shri Raju Keshri is acting as a dummy director as per my instruction.

Q11. Please go through the photocopies of Voter ID Card of Shri Krishna Kumar Parsuramka. Do you know the person? If yes, then please state how does you know him.

Ans. Yes, I know Shri Krishna Kumar Parsuramka. He was one of my employees and works as a dummy director as per my direction. He is one of the directors of Nakodar

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Finance Pvt. Ltd. Aniruddh Motor & General Finance Pvt. Ltd. Kamayani Sales Promotions Pvt. Ltd.

Q12. In his statement made under oath on 12.06.2014, Shri Krishna Kumar Parsuramka stated that as per your instruction, he has signed the papers and documents as a dummy director of Nakodar Finance Pvt. Ltd., Aniruddh Motor & General Finance Pvt. Ltd., Kamayani Sales Promotions Pvt. Ltd. he has also stated that he had worked totally under your guidance and he has no idea about the said companies. Please offer your comment.

Ans. I am in control of Nakodar Finance Pvt. Ltd. Aniruddh Motor & General Finance Pvt. Ltd. Kamayani Sales Promotions Pvt. Ltd. Shri Krishna Kumar Parsuramka is acting as a dummy director as per my instruction.

Q14. It has been observed from the Annexures attached to the form 2 filed by Mahabir Group of Companies to the ROC during F.Y(s) 2008-09 and 2009-10 that share capital has been provided by the various above mentioned companies:

Ans. Sir, over the years, accommodation entries in the form of share capital have been provided to Mahabir Group of Companies in lieu of commission to the tune of Rs.0.10 per hundred rupees.

Q15. Please explain the sources of such share capital provided to Mahabir Group of Companies and also explain the modus operandi of providing accommodation entry.

Ans. Initially, I was introduced to Mahabir Group by Shri Bijay K. Agarwal, the in house CA working from 127, N.S. Road 3rd floor, Room No.-5/4, Kolkata-700 001 who has arranged accommodation entries in the form of share capital for Mahabir Group thereafter the whole process of providing accommodation entry has taken place. The sources of such share capital are nothing but the unaccounted black money transferred by Mahabir Group to Shri Bijay K. Agarwal who used to give it to various market brokers from whom I used to collect cheques and deposits the same in my own company accounts. In the books of accounts of my companies, the money received from Mahabir

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Group of companies used to be shown as money received for sale of fictitious investments (shares). Subsequently, I used to issue cheques from my own company's accounts to Mahabir Group in the garb of paying for share capital to return back their own unaccounted black money. In this way, I used to route back the same amount of unaccounted black money received from Mahabir Group to their books of accounts in the form of share capital. Adjustments were made to the amount of money by adjusting the premiums amounts of each share offered. The valuation of the shares along with premiums had no other financial rationale."

- 4.4 The Board further noted that subsequently vide a notarised Affidavit dated 17th June 2014, the Respondent retracted from his aforesaid Statement given on Oath which was filed with the Complainant Department on the same day. Thus, from above it is noted that the Respondent had retracted his statement given on Oath immediately after five days of his purported statement claiming it to be obtained by the Complainant Department under threat.
- 4.5 The Board also noted in the aforesaid Statement on Oath of the Respondent, reference was also to the Statement on Oath dated 12th June 2014 of Sh. Krishna Kumar Parsuramka, one of the directors of Nakodar Finance Pvt. Ltd., Aniruddh Motor & General Finance Pvt. Ltd. and Kamayani Sales Promotions Pvt. Ltd. He also subsequently retracted from his said Statement on Oath through a notarized Affidavit on 16th Dec 2021.
- 4.6 The Board also noted that in Case no. 1801/18 filed by the Complainant Department, wherein the Respondent was one of the accused, the Additional Chief Judicial Magistrate, Bidhannagar vide Order dated 20th October 2022 dismissed the case under Section 256 Cr.P.C. while noting as under:

"It appears from the case record that the Complainant is no more interested to proceed with this case".



4.7 The Board also noted that during the course of hearing the Complainant Department was asked to provide evidence to the effect that steps had 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. 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. However, the Counsel for the Complainant Department confirmed during the course of hearing that the Complainant Department did not have any further documents to substantiate their case before the Board.

4.8 Thus, on a detailed perusal of the submissions and documents on record, the Board noted that the primary evidence which the Complainant Department brought on record for the charges alleged against the Respondent is the copy of his own Statement recorded on 12th June 2014 which had been subsequently retracted by him on 17th June 2014. The Complainant Department could not bring on record any Assessment Order to show that either commission income had been added to the income of the Respondent on account of any accommodation entries provided by him, as alleged or addition had been there in the hands of any of the beneficiary companies. Further, despite opportunities given to the Complainant Department to substantiate the charges alleged against the Respondent, the Complainant Department failed to bring on record any corroborative/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

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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: 11-01-2024

सही प्रतिलिपि होने को सिद्ध करने के लिए
Certified to be true copy


चतन सिंह / Chetan Singh
कार्यकारी अधिकारी / Executive Officer
अनुशासनशास्त्र निर्देशालय / Disciplinary Directorate
भारतीय इन्स्टीट्यूट ऑफ चार्टर्डेड अकाउंटन्ट्स
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