

CONFIDENTIAL

DISCIPLINARY COMMITTEE [BENCH – II (2023-2024)]

[Constituted under Section 21B of the Chartered Accountants Act, 1949]

Findings under Rule 18(17) and Order under Rule 19(2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

File No. [PR/107/2018-DD/135/2018-DC/1498/2021]

In the matter of:

Shri Amit Kumar Singh
165, Hallu Sarai,
Sambhal – 244302

.....Complainant

Versus

CA. Manoj Kumar Jain
M/s Atul Manoj & Co,
H-21 & 22, First Floor,
Ram Ganga Vihar Shopping Complex,
Opposite Sales Tax Office,
Moradabad – 244 001

.....Respondent

MEMBERS PRESENT:

CA. Ranjeet Kumar Agarwal, Presiding Officer (Present In person)

Smt. Rani S. Nair, Govt. Nominee (Present In person)

Shri Arun Kumar, Govt. Nominee (Present In person)

CA. Sanjay Kumar Agarwal, Member (Present In person)

DATE OF FINAL HEARING: 18.08.2023 (through physical/video conferencing mode)

PARTIES PRESENT :

Complainant: Not Present

Respondent: CA. Manoj Kumar Jain (Through Video Conferencing Mode)

Counsel for Complainant: CA. C. V. Sajan (Through Video Conferencing Mode)

BACKGROUND OF THE CASE:

1. The brief background of the case is as under:
 - a. That the Complainant in the instant case alleged that he and his father shared a 50% (25% plus 25%) ownership stake in M/s Tyagi Tractors (hereafter referred to as "Firm") as partners. The firm had two more partners.
 - b. According to the Complainant, the Respondent was appointed as the Tax Auditor of the Firm for F.Y. 2016–17 without his and his father's knowledge and the Respondent had failed to obtain a "No Objection Certificate" from the previous auditor, CA. Vivek Sheel, which is in violation of the professional ethics of the Institute of Chartered Accountants of India.
 - c. Further, the Complainant claimed that his and his father's capital accounts, which were included in the audited balance sheet for the financial year 2015–16, were absent from the partner's opening balance as of 1st April 2016, and closing balance as of March 31, 2017, and that the Respondent had failed to explain the discrepancy to him.

CHARGES IN BRIEF:-

2. The Committee noted that the charges against the Respondent were as under:
 - a. The Respondent has accepted the position as Statutory Auditor of the Firm for the F.Y. 2016-17 without prior communication to the CA. Vivek Sheel (i.e., the outgoing auditor) and without obtaining "No Objection Certificate" as per Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.
 - b. That there are discrepancies in the financial statements of the Firm for the F.Y. 2016-17 as the capital account of the Complainant and his father which were appearing in audited financial statements of the year 2015-16, were missing in financial statements of the year 2016-17 and the Respondent failed to respond on the same.

3. The Committee noted that the Respondent in his reply at the stage of PFO had, inter-alia, mentioned as under:
- a. That as per his mutual understating and telephonic conversation with the Complainant in the above-mentioned matter, the Complainant has withdrawn his Complaint with immediate effect vide email dated 11th June 2018.
 - b. Keeping in view the above facts and the contents mentioned by the Complainant over email, he requested to drop the complaint as early as possible.
4. The Committee noted that the Director (Discipline), in compliance with Rule 8(5) of The Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 asked the Complainant to submit the formal request to the Directorate in case he wish to withdraw his present complaint against the Respondent as stated by the Respondent.
- 4.1 The Complainant in response to the same submitted withdrawal letter which was subject to the certain conditions such as submission of the copy of reconstitution deed (which was submitted to Mr. Zakir Ali by the Respondent).
 - 4.2 The said copy of said withdrawal letter was not accepted by the Director (Discipline) due to the reason that the withdrawal letter of complaint cannot be conditional, hence making it ineligible to be considered in terms of Rule 6 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.
 - 4.3 Accordingly, the Directorate again vide letter dated 30th January 2019 followed by a reminder letter dated 18th April 2019 requesting the Complainant to submit the original withdrawal letter without any conditions. However, the Complainant failed to submit the absolute original copy of his withdrawal complaint letter

thereby implying that the Complainant does not want to proceed ahead with the process of withdrawal of his complaint against the Respondent from the Disciplinary Directorate. Accordingly, the matter has been dealt with on the merit of the case without consideration of any withdrawal request.

5. The Committee noted that the Director (Discipline) had, in his Prima-facie opinion, noticed that the Respondent had merely taken the plea of withdrawal of complaint by the Complainant in his defence without ensuring that the process of withdrawal of complaint is adhered by the Complainant or not.

5.1 Further, with respect to the first charge, the Respondent failed to submit any comments in his Written Statement on merits. Also, the Respondent has failed to bring on record his communication undertaken with the previous auditor of the Firm, i.e., CA. Vivek Sheel. Hence the Respondent was held prima facie guilty within the meaning of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949.

5.2 Further, on the perusal of the financial statements of the Firm for the F.Y. 2015-16 (as audited by another Chartered Accountant) with respect to the allegation of discrepancies in the financial statements of the Firm for the F.Y. 2016-17, it is noted that as on 31st March, 2016 (**as per Prima Facie Opinion**) there were closing balance of four partner's capital account, viz, Mr. Abhishek Tyagi, Ms. Rizwana Begum, Complainant and Complainant's father, whereas on perusal of the financial statements of the Firm for the F.Y. 2016-17 (**as per Prima Facie Opinion**) (as audited by the Respondent), it is noted that as on 31st March, 2017 (**as per Prima Facie Opinion**), there were closing balance of only two of the partner's capital account, viz. Mr. Abhishek Tyagi and Ms. Rizwana Begum. The Respondent has failed to provide even a copy of the partnership deed or any other evidence on record which could have established the fact that the Complainant and his father had retired from the Firm and therefore, their capital accounts were not taken into consideration in the F.Y. 2016-17 and, also, he has failed to submit any comments in his Written Statement on merits. Hence the Respondent was held prima facie guilty by the Director (Discipline) within

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the meaning of Item (6) and (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

6. Accordingly, the Director (Discipline) in terms of Rule 9 of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, held the Respondent Prima-facie Guilty of Professional Misconduct falling within the meaning of Item (8) of Part I of the First Schedule and Items (6) and (7) of Part I the Second Schedule to the Chartered Accountants Act, 1949. The said items in the Schedule to the Act states as under:

Clause (8) of Part I of the First Schedule:

"A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he-

(8) 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"

Clause (6) of Part I of the Second Schedule:

"A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he: -

(6) Fails to report a material misstatement known to him to appear in a financial statement with which he is concerned in a professional capacity"

Clause (7) of Part I of the Second Schedule

"A chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he:

(7) Does not exercise due diligence, or is grossly negligent in the conduct of his professional duties"

SUBMISSIONS OF THE PARTIES ON THE PRIMA-FACIE OPINION

7. The Committee noted that the Respondent in written submissions dated 29th October 2021 had, inter-alia, mentioned as under:
- a. That he tendered his apologies for not replying on the merits in his written submissions at PFO stage. However he was under the impression that the request for withdrawal of complaint by the Complainant would draw a close to the proceedings.
 - b. That the sole motive of the complaint is to get their accounts settled and once the accounts get settled, the Complainant withdraws the complaint.
 - c. That all the allegations were false and denied.
 - d. That he was told by the Complainant that he does not want to pursue the complaint and will file another unconditional request for withdrawal.
 - e. In response to charge related to failure to communicate with the previous auditor, he submitted that he had personally handed over the letter of communication to the previous auditor and the proof of the same is attached by him with his reply.
 - f. That there was a change in the constitution of the partnership with effect from 1st April, 2016 and accordingly the Complainant and his deceased father had retired from the firm w.e.f 1st April, 2016. Their capital account balances as on 31st March, 2016 were reclassified as unsecured loans and undrawn balance of unsecured loans were outstanding in the audited balance sheet of 31st March, 2017.
 - g. That the documents submitted by the Complainant contain the details of those unsecured loans.
 - h. That the affidavit and settlement deed dated 28th October 2018 proves that the dues of the Complainant and his father were settled.
8. The Committee further noted that the Respondent with his above submission had also enclosed a copy of withdrawal letter dated 1st November 2021, copy of communication with previous auditor dated 10th September 2017,

partnership deed and ledger accounts of Mr. Amit Kumar and Mr. Parmanand Singh in the firm for F.Y. 2016-17 and 2017-18.

BRIEF FACTS OF THE PROCEEDINGS:

9. The Committee noted that the instant case was fixed for hearing on following dates:

S.No.	Date	Status of Hearing
1.	12.05.2023	Part- Heard and Adjourned.
2.	18.08.2023	Heard and concluded. Judgement Reserved.
3.	13.09.2023	Final decision taken on the case.

10. On the day of the first hearing, held on 12th May 2023, the Committee noted that the Respondent along with his counsel CA. C.V. Sajan was present through video conferencing mode. The Committee further noted that the Complainant was not present and that no intimation was received from his side. The Respondent was administered on Oath. Thereafter, the Committee enquired from the Respondent as to whether he is aware of the charges. On the same, the Respondent replied in the affirmative and pleaded Not Guilty to the charges levelled against him.

- 10.1 Thereafter, the Committee informed the Respondent about the absence of the Complainant. On the same, the Respondent's Counsel submitted that the Complainant had already withdrawn his complaint vide his email dated 2nd or 3rd November 2021 and the same has been forwarded to the office, however the Director (Discipline) has not considered the same due to conditional withdrawal. Further looking into the fact that this was the first hearing, the Committee decided to adjourn the hearing. With this, the hearing in the matter was part heard & adjourned.

11. On the day of the final hearing held on 18th August 2023, the Committee noted that the Respondent along with his counsel CA. C.V. Sajan were present

through video conferencing mode. The Committee further noted that the Complainant was not present despite the notice duly served upon him.

11.1 Thereafter, the Respondent was asked to submit his defence. The Respondent/ his Counsel in their submissions had, inter-alia, submitted as under:

- a. That the Complainant had given a conditional withdrawal of Complaint at the stage of PFO itself.
- b. That after the stage of PFO, the Complainant has submitted another unconditional withdrawal letter and the same is also submitted by him along with his written submissions dated 29th October 2021.
- c. That the withdrawal was rejected at PFO stage because of conditional withdrawal, hence the Complainant submitted an unconditional withdrawal after PFO was formed.
- d. That the Complainant accounts were not settled with the firm. Hence to get the accounts settled he dragged the Respondent into the matter and filed the present Complaint.
- e. That he had filed the proof of settlement of accounts of the Complainant and thus the grievance of the Complainant was already settled, hence, he withdrew the Complaint.
- f. That another grievance of the Complainant is that the Respondent has not communicated with the previous auditor, but the Complainant had nothing to do with the same. Further, he has already submitted about the same in his written statement along with the proof of communication.
- g. That there was a change in the constitution of the partnership with effect from 1st April 2016 and accordingly the Complainant and his deceased father had retired from the firm on 1st April 2016. Their capital account balances as on 31st March 2016 were reclassified as unsecured loans and an undrawn balance of unsecured loans were outstanding in the audited balance sheet of 31st March 2017. So, the grievance that balance was missing in the balance sheet was because of wrong perception since, there was a retirement, and the capital balance had to be reclassified as unsecured loans.

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- 11.2 Thereafter, the Committee, on consideration of the Respondent's submissions gave the directions to submit the followings documents within the next 7 days:
- a. Copy of capital accounts of Mr. Amit Kumar Singh and Mr. Parmanand for the F.Y. 2016-2017.
 - b. Copy of Unsecured Loan Accounts of Mr. Amit Kumar Singh and Mr. Parmanand for the F.Y. 2016-2017.
 - c. Copy Journal voucher reflecting the transfer entries from Capital account to Unsecured loan account as on 1st April 2016.
- 11.3 Thereafter, the Committee, looking into the Respondent's submissions against the charges levelled, recorded his plea and accordingly concluded the hearing by reserving its judgement.
12. Thereafter, this matter was placed in hearing held on 13th September 2023 wherein the same members, who heard the case earlier, were present for consideration of the facts and arriving at a decision by the Committee. The Committee noted that pursuant to its directions given in the meeting held on 18th August 2023, the Respondent had submitted the desired documents.
- 12.1 Accordingly, keeping in view the facts and circumstances of the case, the material on record and the submissions of the parties, the Committee passed its judgement.

FINDINGS OF THE COMMITTEE

13. As regards the first charge relating to non-communication with the previous auditor, the Committee noted that the Respondent had not submitted anything on merits at the stage of Prima Facie Opinion. However, the Respondent, after the receipt of Prima facie opinion had submitted proof of communication with the previous auditor dated 10th September 2017. On perusal of the same, the Committee noted that the communication was made well before signing the

financial statement as on 31st March 2017 as the same, were signed on 6th October, 2017. The Committee hence concluded that the Respondent had ensured the compliance of the requirement of Item (8) of Part I of the First Schedule to the Chartered Accountants Act, 1949. Accordingly, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (8) of Part I of First Schedule to the Chartered Accountants Act, 1949.

14. As regards the second charge relating to discrepancies in financial statements of the firm, the Committee noted that as on 31st March, 2016 (**as per Prima Facie opinion**) there was a closing balance of four partner's capital account, viz, Mr. Abhishek Tyagi, Ms. Rizwana Begum, Complainant and Complainant's father, whereas on perusal of the financial statements of the Firm for the F.Y. 2016-17 (**as per Prima Facie Opinion**) (as audited by the Respondent), it was noted that as on 31st March, 2017 (**as per Prima Facie Opinion**), there were closing balance of only two of the partner's capital account, viz. Mr. Abhishek Tyagi and Ms. Rizwana Begum.
- 14.1 The Committee noted that the Respondent had submitted that there was a change in the constitution of the partnership with effect from 1st April, 2016 and the Complainant and his deceased father had retired from the firm on 1st April, 2016. Further, capital account balances of the retired partners which were in the audited balance sheet as on 31st March, 2016 were reclassified as unsecured loans and an undrawn balance of unsecured loans were outstanding in the audited balance sheet of the year ending 31st March, 2017.
- 14.2 The Committee on perusal of partnership deed submitted by the Respondent noted that the Complainant and his father have retired from the firm w.e.f. 1st April, 2016 and that the retirement cum reconstitution deed was signed by the Complainant and his father as witnesses.
- 14.3 The Committee on perusal of financial statements as on 31st March, 2017 noted that the amount of Rs 8,63,733/- in the name of Complainant and amount of Rs

- 1,05,997/- in the name of Complainant's father were duly reflected as an unsecured loan which is the same amount shown in their capital accounts as on 31st March, 2016.
- 14.4 The Committee on perusal of ledger accounts of Complainant and his father for the financial year 2016-17 and journal voucher reflecting the transfer entries from the Capital account to their unsecured loan accounts as on 1st April 2016 further noted that there is no discrepancy in the financial statements of the firm relating to their capital accounts.
- 14.5 The Committee further noted that the Complainant never appeared before it and chose to withdraw the complaint after settling his disputes with other partners of the firm. The Committee hence noted that the Complainant was duly aware about all the happenings in the partnership firm and the only issue was disclosure of their balances in next year's balance sheet.
- 14.6 The Committee looking into the conduct of the same was of the view that the complaint against the Respondent was due to dispute between the partners which was sorted later. The Committee, while passing benefit in favour of the Respondent, cautions him to be careful in future.
- 14.7 Accordingly, the Committee held the Respondent **NOT GUILTY** of Professional Misconduct falling within the meaning of Items (6) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

CONCLUSION

15. In view of the above findings stated in the above para's vis-a-vis material on record, the Committee, in its considered opinion, holds the Respondent is **NOT GUILTY** of Professional Misconduct falling within the meaning of Item (8) of Part 1 of the First Schedule and Items (6) & (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

ORDER

16. Accordingly, in terms of Rule 19 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee passes Order for closure of this case against the Respondent.

SD/-
(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

SD/-
(MRS. RANI NAIR, I.R.S. RETD.)
GOVERNMENT NOMINEE

SD/-
(SHRI ARUN KUMAR, I.A.S. RETD.)
GOVERNMENT NOMINEE

SD/-
(CA. SANJAY KUMAR AGARWAL)
MEMBER

DATE: 14TH DECEMBER, 2023

PLACE: NEW DELHI

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

Nitika Gupta
सीए नीतिका गुप्ता / CA. Nitika Gupta
सहायक निदेशक / Assistant Director
अनुशासनात्मक निदेशक / Directorate
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