



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

[PR/304/2020/DD/298/2020/BOD/672/2022]

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. Phalguna Kumar E (M. No. 020278)

Partner, M/s E Phalguna Kumar & Company
Chartered Accountants
D No-1-599/2, Balaji Colony, Tirupati.

....Complainant

-Vs-

CA. Rajagopal Manikonda Naidu (M. No. 024819)

M/s Rajgopal Naidu & Co,
Chartered Accountants,
10-80, 6th Cross, Royal Nagar, RC Road, Tirupati.

....Respondent

[PR/304/2020/DD/298/2020/BOD/672/2022]

MEMBERS PRESENT:

CA. Rajendra Kumar P, Presiding Officer (in person)

Ms. Dolly Chakrabarty (IAAS, ret'd.), Government Nominee (through video conferencing)

CA. Priti Savla, Member (through video conferencing)

Date of Hearing and passing Order: 23rd January 2024

1. The Board of Discipline vide its Findings dated **28th December 2023** was of the view that **CA. Rajagopal Manikonda Naidu (M.No. 024819)** 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. Rajagopal Manikonda Naidu (M.No. 024819)** and communication dated 16th January 2024 was addressed to him thereby granting him an opportunity of being heard on 23rd January 2024 which was exercised by him by being present through video conferencing. He confirmed the receipt of the Findings of the Board and made his oral submissions before the Board especially emphasizing the fact that in view of the peculiar circumstances of the case, the audit was conducted after an elapse of around two years from the end of the alleged financial year. He also referred to his written representation dated 19th January 2024 on the Findings of the Board.
3. Thus, upon consideration of the facts of the case, the consequent misconduct of **CA. Rajagopal Manikonda Naidu (M.No. 024819)** and keeping in view his representation before it, the Board looking into the genuine intention of **CA. Rajagopal Manikonda Naidu (M.No. 024819)** decided to impose a Fine of Rs.10,000/- (Rs. Ten Thousand only) upon him.

Sd/-

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

Sd/-

**Ms. Dolly Chakrabarty (IAAS, ret'd.)
(Government Nominee)**

सर्वो प्रामाणिक होने के लिए प्रमाणित
Certified to be true copy
Charan Singh
Charan Singh / Charan Singh
कार्यकारी अधिकारी / Executive Officer
अनुशासनसम्बन्धित निर्देशिका / Disciplinary Directorate
भारतीय चरणीय लेखाकार संस्थान
The Institute Chartered Accountants of India
आर्म्सबीएआई भवन, विद्यानगर, शाहदरा, दिल्ली-110032
ICAI Bhanu, Vidya Nagar, Shahdara, Delhi-110032

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/304/2020-DD/298/20/BOD/672/2022]

CORAM: (Present in Person)

CA. Rajendra Kumar P, Presiding Officer
Ms. Dolly Chakrabarty (IAAS, ret'd.), Government Nominee

In the matter of:

CA. Phalguna Kumar E (M.No. 020278)
Partner, M/s E Phalguna Kumar & Company,
Chartered Accountants,
1-5-5992/2, Balaji Colony,
Tirupati.

..... Complainant

Versus

CA. Rajagopal Manikonda Naidu (M.No. 024819)
M/s Rajgopal Naidu & Co,
Chartered Accountants,
10-80, 6th Cross, Royal Nagar
RC Road, Tirupati.

..... Respondent

DATE OF FINAL HEARING : 15th June 2023

PARTIES PRESENT(in person):

Complainant :	CA. Phalguna Kumar E
Counsel for the Complainant :	Shri G. Bhaskar and Shri I. Dinesh, Advocates
Respondent :	CA. Rajagopal Manikonda Naidu
Counsel for the Respondent :	CA. R. G. Rajan

FINDINGS:

BRIEF BACKGROUND OF CASE:

1.1 The Complainant was appointed as auditors for the Financial Years 2013-14 to 2015-16 by a Trust named as Tirumala Tirupati Devasthanams (TTD) (hereinafter referred to as the

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Trust) for conducting Tax Audit u/s 10(23C) for claiming the income exemption under Income Tax Act 1961. The Trust is managed by a State Govt Appointed Trust Board, and it is the biggest religious Trust in India. Its annual gross receipts are Rs. 2500 crores. Its chief Executive is an IAS Officer, and he is assisted by following two Members of the Institute: -

- a) Financial Advisor and Chief Accounts Officer named as O. Balaji, he is CA M.No. 020114
- b) Under O. Balaji, there is a Chief Accounts Officer named CA. S.Ravi Prasadu (M.No. 118649). He gave the above Appointment Order dated 21.06.2013 by the Order of Executive Officer of the Trust.

1.2 The Complainant conducted the Tax Audit for the Financial Year 2013-14 and 2014-15 and submitted the reports. For the year 2015-16 when the Complainant wanted to take up the Audit in June 2016, they were told that there was no necessity to do that audit as the Trust got Section 10(23BBA) recognition on account of which there was no necessity to file the Income Tax return and not to get the accounts audited. The Trust filed the return of income claiming exemption u/s 10(23BBA), such return of income was taken up for scrutiny in the year 2017 but the Income -Tax Department did not accept the point that there is no necessity to file the audit report. Thus, the Trust filed the audit report in December 2018 in physical hard copy manually signed by the Respondent for the FY 2015-16. Such an audit report needs Financial Statements, attestation which was done by two employee CAs. The Complainant further stated that they contacted the Respondent over the phone on 26.06.2020 to confirm whether he has carried out the audit and the Respondent has confirmed the same. Thereafter, the Complainant wrote a letter to Trust (Auditee) on 27.06.2020 and asked why some other auditor was appointed in his place. However, the Trust did not respond.

1.3 The Complainant wrote a letter to Asst. Commissioner of Income Tax Act (ACIT), (Exmp), Vijaywada to give the information about the audit report however, he wrote a letter to Trust to seek permission for the same. The Trust Chief Account Officer Mr. S. Ravi Prasadu objected to giving the details of the auditor's name and auditor report details and accordingly, ACIT refused to give the details.

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CHARGE(S) ALLEGED:

Against the aforesaid background, the Complainant alleged as under:

- 2.1 The Respondent did not communicate with the previous auditor i.e. the Complainant before accepting the assignment of issuing audit report as required under Sec. 10(23C)(v) of Income Tax Act 1961 for the Financial Year 2015-16 in respect of the Trust.
- 2.2 The Finance Department of Trust headed by the ICAI members i.e., CA. O. Balaji and CA. S. Ravi Prasadu colluded with the Respondent in removing the Complainant from the audit work because the Complainant brought to the notice to the top management in 2015 regarding the tax liability on account of TDS defaults to the extent of Rs. 1.1649 crores. These two members guided the management that an auditor can be appointed orally to conduct the Tax Audit. The Tax Audit report has to be filed electronically from assessment year 2016-17, however the Respondent has filed the audit report manually.
- 2.3 The Respondent has done the Book Keeping (Accounting work) for the main temple of the Trust where approx. Rs. 850 crores per annum HUNDI receipts was there. The Financial Advisor and Chief Account Officer (CA. O. Balaji) and Chief Account Officer (CA. S. Ravi Prasadu) also knew that a book-keeping firm shall not do the Tax Audit but to keep the things in dark and to by-pass the already appointed Tax Auditor, without proper record and paper work this change was brought in and they signed the Financial Statements along with the Respondent with malafide intention and also obstructed in procurement of evidences from Income-Tax Department and also from the Trust.

The Board noted that the Director (Discipline) in his Prima Facie Opinion held the Respondent Gilty only in respect of the charge specified at para 2.1 above and the said view had been accepted by the Board. Accordingly, the conduct of the Respondent was examined only in respect of the charge specified at para 2.1 above.

BRIEF OF PROCEEDINGS HELD:

3.

S.no.	Date of Hearing(s)	Status of Hearing(s)
1.	20 th April, 2023	Adjourned at the request of the Complainant
2.	15th June, 2023	Heard and concluded

BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE:

(a) RESPONDENT:

4. The Respondent in his defence, inter-alia, submitted as under: -
- 4.1 The Respondent reiterated the circumstances in which he could not communicate with the previous auditor as the Trust filed its return of income for A.Y 2016-17 and claimed exemption of its income U / s (23BBA) of the I.T Act, 1961. There was no statutory requirement to file an audit report while claiming exemption of income U/s.10(23BBA). Accordingly, the Trust has not obtained any audit report for this year and did not file such report along with the return of income.
- 4.2 When the I.T Return of the Trust was selected for scrutiny, the Assessing Officer [DCIT(E), Vijayawada] took the view that the Trust is eligible for exemption U/s.10(23C) and not U/s. 10(23BBA) as claimed by the Trust. The Trust took strong exception to the above view of the AO and directed the Respondent to submit to the AO that the exemption is available U/s 10(23BBA) only and not U/s 10(23C) as argued by the AO. The Trust produced the copy of the Order of the jurisdictional CIT (E), dt. 19.08.2016, in which the CIT categorically ordered that the TTD is eligible for exemption of its income U/s 10(23BBA) only. As authorized representative of the Trust, the Respondent produced the said Order to the AO and requested him to allow the exemption U/s.10(23BBA) of IT Act, 1961 to the Trust, as claimed in the return.
- 4.3 The AO, while considering the Order of the CIT, noticed that the same was silent on the assessment year from which the Trust was eligible to claim the exemption U/s. 10(23BBA). He further stated that since the Order was received during the middle of the assessment year 2016-17, the exemption will be allowed U/s 10(23BBA) from the next assessment year and for the current assessment year, the exemption will be allowed U/s 10(23C) only.
- 4.4 Besides the above decision, the AO insisted that for assessment year under review (AY 2016-17), the Trust was eligible for exemption U/s 10(23C) and accordingly directed the assessee to file the audit report as required U/s10(23C), though belatedly, in physical form, so as to allow the exemption U/s 10(23C).
- 4.5 As the statutory time limit for completion of assessment was nearing (December 2018), the Trust had hardly any time to appoint an auditor and get the audit report and furnish to the AO before due date for completion of assessment. Since the annual accounts of

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TTD for the relevant previous year were already audited by a duly qualified CA and an unqualified audit report was issued on the same and since the audit report required U/s10(23C) is only a technical compliance, to buy peace with the Department and not to go on litigation, the Trust decided to obtain a report U/s 10(23C) and file it. Accordingly, as the Respondent was already its AR and familiar with the subject, the Trust approached him with a request to issue the audit report at the earliest.

- 4.6 As the Respondent was already representing the Trust before the AO and familiar with the accounts of the Trust and since the annual accounts duly audited by a CA were already available, to save the Trust from the possible litigation, the Respondent accepted the request and conducted the audit.
- 4.7 While conducting the audit and issuing the report as required U/s10(23C), to comply with the AO's requirements and to save the Trust from the possible litigation, the Respondent missed to communicate with the previous auditor, before accepting the audit. This was a purely unintentional omission on his part in helping the Trust. Further, the TTD also has been enjoying the tax exemption ever since its inception.
- 4.8 Even though it has not done any mistake in claiming the exemption U/s 10(23BBA), not to hurt the sentiments of Devotees and not to get into litigation with Government, the Trust wished to agree to the view of AO and comply with the requirements. Hence, the Trust made a special request to the Respondent for issuing the report.
- 4.9 In the above circumstances, the Respondent had hardly any time to communicate with the previous auditor and wait for his NOC and proceeded to issue the audit report. Hence, in such a scenario, one should not take the small non-compliances with routine procedural clauses, as a serious lapse / non-compliance on the part of the auditor. He requested to consider the circumstances in which the small procedural non-compliance has occurred on his part and requested to condone the same and drop the allegation levelled against him. He assured that in future, he shall comply with the Code of Ethics of ICAI in letter and spirit.

(b) COMPLAINANT:

5. The Complainant made the following submissions to substantiate his case:

- 5.1** The Respondent has done the Book-keeping and also the Statutory Audit. As per ICAI Code of conduct a CA who has done the Bookkeeping work/Concurrent audit work/Internal Audit work shall not undertake the Statutory Audit work, this has been violated by the Respondent.
- 5.2** The Respondent accepted that he has conducted the Tax-Audit in peculiar circumstances for the AY 2016-17 (FY 2015-16). As per Respondent's letter dated 13th March 2023, the requirement of furnishing the Audit Report was intimated to the Trust as per the Notice of the Income Tax Department dated 8th December 2018 U/s 142(1). The Respondent submitted such Audit Report in Form-10BB.
- 5.3** The Director in his Prima facie opinion has stated that the Respondent was the Tax-Auditor for FY 2015-16. At the same time, he has drawn the conclusion that the Respondent has not handled any accounting work for the same F.Y. 2015-16. Whereas the evidence furnished by Respondent conclusively proves that the respondent has done the accounting review, Accounting Reconciliation, Vouching, Bank Account Reconciliation with Tally Data.
- 5.4** In respect of the work executed for the past ten years, the Respondent produced a TTD commendation Letter wherein his efforts for increasing the Income of TTD trust for financial year 2011-12 is mentioned.
- 5.5** The functions performed by the Respondent fall within the limb of "Management Functions". Clearly prevention of revenue leakage is within the scope of management functions. The services performed by the respondent fall within the domain of internal audit/management services. This service has created an interest for the respondent making him "non-independent". Any adverse reporting in the Tax Audit will have an impact on the utilisation of management services from the respondent in future. In such a scenario, the Independence of the Respondent is severely threatened.
- 5.6** The Respondent has not satisfied himself that the appointment given to him to act as Tax Auditor is accordance with the statute governing the entity. The Respondent hurriedly completed the audit of accounts under the Income Tax Act 1961 without satisfying himself about the legitimacy of his appointment. He claimed that he acted as a Tax Auditor on the basis of oral intimation which is against the provisions of the Code of Ethics. After such oral intimation, the respondent must have obtained a letter of appointment. Such an appointment must have been made by the Executive Officer of the Trust, which did not take place in this case.

5.7 The violation of the above would also result in professional misconduct under Clause 4 of Part I of Second Schedule. None of the above considerations were taken into account by the Director (Discipline) of ICAI. Further, the Director (Discipline) failed to consider the following points into consideration:

- (a) It is not possible to conduct an audit of World Famous largest Hindu Religious Organization (Tirumala Tirupati Devasthanams, Tirupati) within two days. The Financial statements subjected to audit by the Respondent are not attached along with Form 10BB. It goes to show that no such documents are available. Further, the Respondent was negligent enough to not strike off the words Surplus or deficit in Form 10BB which is the audit report. Without underlying financial statements which were so subjected to audit, the Respondent expressed his opinion and also mis-represented to the Income Tax Department which is not correct in law.
- (b) If the above-mentioned financial statements are available, examination of the persons who have signed those financial statements along with the Respondent, to prove that they are the originals drawn from the Basic books of accounts and when they have signed, is verifiable. Without all these concluding that the Audit is carried on as per Law is not that is prescribed.
- (c) Assuming that the True and Fairness of the financial statements is already certified by some other CA Firm, as contended by the respondent in his letter dated 7th September 2020, no copy of such Audit report is called for by the Directorate.
- (d) As per TTD proceedings Dated 11th October 2017, the appointment to the Respondent is only for representing the TTD trust for this A.Y. 2016-17 in income tax Proceedings and nothing to do to conduct the audit or to certify the True & Fairness of the Financial Statements. The Director (Discipline) failed to appreciate that within Two days of such oral Appointment, Audit Report in Form 10BB is signed. The Director (Discipline) failed to appreciate that it is not possible to issue such an Audit report after conducting the Audit (as per ICAI Norms).
- (e) Without examining the primary facts and evidence, the Board of Discipline erred in coming to the conclusion, that the Respondent has done the Audit in hurry, in a peculiar circumstance and has not done any fault in conducting the Audit and issuing the Audit report.

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OBSERVATIONS OF THE BOARD:

6.1 As regard the charge alleged at para 2.1 above, 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.

The Board further noted that the Council of ICAI has laid certain guidelines as mentioned in Para -1 of page no.166 of Code of Ethics – 2009 which read as below:

"1. The requirement for communicating with the previous auditor being a Chartered Accountant in practice would apply to all types of audit viz., statutory audit, tax audit, internal audit, concurrent audit or any other kind of audit."

6.2 The Board further noted that the Respondent in his written submissions made at the Prima Facie stage and also during the hearing accepted that he issued the audit report to the Trust for the Financial Year 2015-16 u/s 10(23C) of the Income Tax Act 1961 on 10th December 2018 without any communication with the Complainant being the previous Auditor as there was no time to communicate. He also explained the circumstances in

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which the audit was accepted, and report was issued by him within a short period of time. However, the Board was of the view that a plain reading of the Chartered Accountant Act 1949 together the Code of Ethics clearly suggest that there is no circumstance mentioned in such provisions under which the requirement of such communication can be eased-up. Thus, keeping in view of the acceptance of the Respondent that he failed to communicate with the Complainant being the previous auditor, prior to acceptance of the Audit of the Trust for the FY 2015-16 u/s 10(23C) of the Income Tax Act 1961 together with the documents and submissions on record, the Board held the Respondent Guilty in respect of the charge alleged.

- 6.3 The Board was also conscious of the fact that since there are no provisions for review under the Chartered Accountants Act 1949 and the Rules framed thereunder, the submissions of the Complainant with respect to the charges for which the Respondent had already been held not guilty at the Prima Facie stage were not taken into view by the Board while arriving at its Findings.

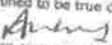
CONCLUSION:

7. 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, reted.)
(Government Nominee)

DATE: 28-12-2023

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy

अरुण कुमार / Arun Kumar
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
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