



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

PR/135/2016/DD/163/2016/BOD/640/2022

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:

Shri Sanjay Jain
House No. 2235,
Sector 21-C,
Chandigarh – 160022

..... Complainant

Versus

CA. Kapil Dev Aggarwal (M. No. 082908)
M/S B Aggarwal & Co. (FRN 004706N),
Chartered Accountants,
8/19, Ground Floor,
Smile Chamber,
W E A Karol Bagh,
New Delhi – 110005.

..... Respondent

[PR/135/2016/DD/163/2016/BOD/640/2022]

MEMBERS PRESENT (in person):

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

Date of Hearing and passing Order: 10th April 2024

1. The Board of Discipline vide its findings dated **2nd February 2024** was of the view that **CA. Kapil Dev Aggarwal (M. No. 082908)** is **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 Act.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against **CA. Kapil Dev Aggarwal (M. No. 082908)** and communication dated 2nd April 2024 was addressed to him thereby granting him an opportunity of being heard on 10th April 2024 which was exercised by him by being present through video conferencing. He confirmed the receipt of the Findings of the Board and concurred with the same. The Board also noted the written submissions of the Respondent dated 6th April, 2024. He also pleaded before the Board to take a lenient view in this matter.
3. Thus, upon consideration of the facts of the case, the consequent misconduct of **CA. Kapil Dev Aggarwal (M. No. 082908)** and keeping in view his representation before it, **the Board decided to impose a Fine of Rs.1,00,000/- (Rs. One Lakh only) upon him.**

Sd/-
CA. Rajendra Kumar P
(Presiding Officer)

Sd/-
Ms. Dolly Chakrabarty (IAAS, retd.)
(Government Nominee)

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/135/2016/DD/163/2016/BOD/640/2022]

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:

Shri Sanjay Jain

House No. 2235,

Sector 21-C,

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.....Complainant

Versus

CA. Kapil Dev Aggarwal (M. No. 082908)

M/S B Aggarwal & Co. (FRN 004706N),

Chartered Accountants,

8/19, Ground Floor,

Smile Chamber,

W E A Karol Bagh,

New Delhi – 110005.

.....Respondent

DATE OF FINAL HEARING

:

11th January 2024

PARTIES PRESENT:

Council for the Respondent (in Person)

:

Dr. S.S. Sharma, Advocate

Complainant (in Person)

:

Shri Sanjay Jain

Counsel for the Complainant (through VC)

:

Sh. Aman Preet Singh, Advocate

Witness (in Person)

:

CA. Rahul Khurana

FINDINGS:

BRIEF BACKGROUND OF CASE:

- 1.1 The Complainant being founder Director of Premium Acres was dealing with a real estate company in 2009 of which Shri Parminder Singh Sehgal was the CEO who allured

him to do own business in equal partnership. The Complainant agreed and accordingly, on 5th January 2010, a company was incorporated in the name of M/s Premium Acres Infratech Pvt Ltd (herein after referred to as the '**Company**') having its office at Sector 17 Chandigarh.

- 1.2 Being a Chartered Accountant, CA. Parminder Singh Sehgal maintained and handled all records of the company. The Complainant claimed to have invested Rs 2 crore in the firm and was further allured into investing Rs. 62 lakh more on a promise that CA. Parminder Singh Sehgal too would invest a similar amount. The Complainant agreed to it. Later, the firm purchased 150 plots from TDI Ltd. It was decided that Complainant would handle the sales and marketing of the business while CA. Parminder Singh Sehgal would handle the documentation work in association with the Respondent. Further on recommendation of CA. Parminder Singh Sehgal, he obtained the services of the Respondent for the purpose of filing his Income Tax Returns as well as for his companies.
- 1.3 The Complainant was regularly depositing tax by giving tax amount through account payee cheques/RTGS/NEFT to the Respondent and whatever the tax amount fell due ,it was being deposited in account of the Respondent who in turn used to deposit the same with the Department and provided the Complainant with duly stamped acknowledgement receipts depicting the payment of tax dues in Income Tax returns shown to be filed with Income Tax Department. The Complainant further stated that lately, it came to his notice that the Respondent in connivance with other business associates committed various fraudulent activities with respect to the Complainant's Company in respect to which FIR no. 38 dated 31st January 2015 and FIR no 164 dated 13th April 2016 was registered due to fraudulent acts of the Respondent. CA. Parminder Singh Sehgal in connivance with the Respondent asked the Complainant to leave the blank signed documents/ papers with him so that in his absence, the business does not suffer which was agreed by the Complainant and he left the documents with him.
- 1.4 The Complainant further stated on record that the Respondent misappropriated funds of the company to the tune of Rs 7 crores and removed the Complainant and his wife illegally from the directorship of the company. The Respondent further tried to take possession of the office of the company by forging documents.

CHARGE(s) ALLEGED:

2. Against the aforesaid background, the following was alleged against the Respondent:
 - 2.1 The Respondent was involved in large scale evasion of tax revenue and also in collusion with Income tax Officials provided forged and fabricated acknowledgement receipts of payment of Tax and Income Tax Returns which depicted not only payment of Tax but also receipt of Income Tax returns duly stamped for which FIR no 164 dated 13.04.2016 had been filed against the Respondent.
 - 2.2 The Respondent, in connivance with other Co-Directors namely CA. Parminder Singh Sehgal and his wife Mrs. Parminder Kaur Sehgal, had committed various illegal and fraudulent activities in the Company for which FIR no 38 dated 30th January 2015 had been filled against the Respondent. On perusal of the said FIR, it is noted to have been alleged therein that CA. Parminder Singh in connivance with the Respondent and others got the digital signatures of the Complainant along with password and started using Complainant's digital signatures for filing various e-Forms in the office of Registrar of Companies along with bogus, fraudulent, and antedated papers.
 - 2.3 CA. Parminder Singh in criminal conspiracy with the Respondent managed to project that the wife of the Complainant, Mrs. Shamita Jain resigned in the Board Meeting shown to have been held as on 30th October 2012 which was never held at the Registered office of the company. The same was shown by forging and fabricating her signatures on the resignation letter dated 25.10.2012 whereas in fact she never resigned from the directorship of the company. The e-Form no. DIR-12 regarding the resignation of the complainant's wife Mrs. Shamita Jain was filed dated 01.04.2014 after a gap of more than one and a half years which itself shows that the documents and papers regarding resignation of his wife Mrs. Shamita Jain were created antedated by forging and fabricating resignation letter. The Complainant was also removed from the directorship of the company with effect from 09.06.2014 which is based upon fabricated documents which was as a result of preplanned conspiracy between CA. Parminder Singh Sehgal, his wife and the Respondent.
 - 2.4 Mr. Kamal Aggarwal who was deputed by the Respondent firm to prepare the books of accounts of the Company had done a fraud of more than Rs 70,00,000/- and the

Respondent had never pointed out that fraud during the statutory audit of the Company as he was related to the Respondent.

The Board noted that the Director (Discipline) in his Prima Facie Opinion held the Respondent prima facie 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 in respect of the charge specified at para 2.1 above only. 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)	Compliance of direction, if any, given by the Board
1.	16 th May 2023	Adjourned on account of non-representation of the Complainant.
2.	29 th June 2023	Part-heard and adjourned.
3.	3 rd July 2023	Adjourned at the request of the Complainant to provide final opportunity to the Complainant to present his case before the Board.
4.	22 nd August 2023	Part-heard and adjourned with the following directions: - <u>To the Respondent:</u> 1. Copy of bills raised by him for rendering his services to the Complainant together with the details of the Service Tax paid on the same by him. <u>To the Complainant:</u>	The Respondent submitted his response vide communication dated 27 th September 2023.No response was received from the Complainant. Letter dated 28 th September 2023 was sent to the Income Tax

		<p>1. Annexures to the Notice dated 28th Feb 2017/3rd March 2017 issued to the Complainant by the Income Tax Department</p> <p><u>To the Office:</u></p> <p>1. To summon CA. Rahul Khurana, the authorised representative of the Complainant before the Income Tax Department for the AY 2010-11 as a Witness.</p> <p>2. To check from the Income Tax Department as regard the authenticity of the Letter dated 28th Feb 2017/3rd March 2017 issued to the Complainant.</p> <p>3. To write to MCA to investigate into the affairs of the company under question.</p>	Department. However, no response was received.
5.	5 th October 2023	Adjourned at the request of the Complainant.
6.	6 th December 2023	Adjourned at the request of the Complainant.
7.	11 th January 2024	Heard and concluded.

BRIEF SUBMISSIONS OF THE PARTIES TO THE CASE: -

A. Respondent

4. The Respondent in his defence, inter-alia, stated as under:

4.1 This complaint is the offshoot of the dispute amongst directors of the company M/s Premium Acres Infratech Pvt Ltd. The Respondent has nothing to do with their

dispute. The Complainant unnecessarily wants to drag the Respondent to make him party to the dispute.

- 4.2 The Complainant made payment to the Respondent in the month of May 2011, and June 2011. How the Complainant can expect from the Respondent to deposit taxes in the month of March 2010 (30th March 2010) and in the month of September 2010 (29th September 2010). The Complainant sought compensation for his illegal actions of non-filing of Income Tax return and non-payment of income tax for the assessment years 2009-2010 and 2010-2011. When tax was due in March 2010, at that time even the Complainant was not known to the Respondent. The Complainant has not filed his Assessment Order for next year, which may have exposed him to doing misdeeds in the company.
- 4.3 The Complainant came in contact through the reference of another person in the month of December 2010. The payments to the Respondent were made much later than the date of filing of returns by the Complainant. The Complainant has himself filed these returns with The Income Tax Department without paying taxes on income for the assessment years 2009-2010 and 2010-2011 to falsely implicate the Respondent. The first payment was made to the Respondent on 07.05.2011 and onwards, how it is possible to deposit the tax on 09.03.2010 and 29.09.2010? In the complaint filed by the Complainant, in ledger account from 01.04.2010 to 31.03.2012, the Complainant is claiming making a provision for tax and amount of tax deposited on 01.04.2011. The copy of the account is from 01.04.2010 to 31.03.2012 and have no entry up to 31.03.2011. The detailed utilization of receipts from the Complainant through Bank has been filed and is on record. The Respondent has never disputed the payment received from the Complainant. The Respondent received an amount of Rs 24,28,883/- from the Complainant and charged fees for professional services of Rs 15,00,000 /- and paid Rs. 1,85,400/- on account of service tax. The total amount paid as taxes on behalf of the client is Rs 9,58,156/-. The balance amount of Rs 2,14,673/- is still recoverable from the Complainant on account of service tax paid and tax deposited of Rs.29,273/-.
- 4.4 The Respondent has already submitted to have utilized the amount received from the Complainant:
- i) for payment of taxes prospectively.
 - ii) towards his fee bill of Rs 11,23,600/- up to 31-03-2011 and has duly paid the service tax @ 12.36% on the billed amount to the government by the Respondent.
- 4.5 The Respondent had admitted the receipt of the said amount on 7.5.2011/- 13.5.2011 and 26.5.2011. The Respondent in total received Rs 24,28,883/- from the Complainant and spent Rs 26,43,556/-. Out of the said amount of Rs. 24,28,883/- received from Complainant, an amount of Rs.11,23,600/- was received as fees for the services rendered up to 31.3.2011 and an amount of Rs 5,51,800/- was taken by him in respect of enquiry conducted in the Income Tax Department in Delhi at Jhandewalan office in respect of heavy cash deposited by the Complainant. Further, the Respondent had paid an amount of Rs.4,01,059 as tax for the Assessment year 2011-12 and

other sums of Rs.55,640/-, Rs.55,457/- was paid as tax in May 2013 and another sum of Rs. 4,46,000/- was paid as tax in September 2013 for the Assessment year 2012-13. The total amount paid as taxes on behalf of the client is Rs 9,58,156/- and fees charged is Rs 15,00,000/- and Service Tax is paid amounting to Rs 1,85,400/- and taxes excess paid amounting to 29273/-. The total amount of Rs 2, 14,673/- is still recoverable from the Complainant.

- 4.6 The fees charged depends upon the caliber of the person who is taking of assignment. The fee charged in this case is 10 times less than the fees charged by the multi-national company for a similar assignment. There cannot be any criteria for charging the fees as ICAI has recommended much higher fees in respect of time devoted to the assignment by the Respondent. It is very common to have oral appointments in individual cases, which are different from corporates. On disputes even the appointment letters are challenged by the aggrieved party.
- 4.7 What professional charges are reasonable for a particular case, depends on the handling of the case, depends on individual acumen ship, experience on the subject matter, time, and money devoted, seriousness and importance of the matter. The minimum scale of fees has been worked out by considering average time required to complete such assignments. However, members are free to charge varying rates depending upon the nature and complexity of assignment and time involved in completing the same. Further, office time spent travelling & out-of-pocket expenses would be chargeable separately. GST and other taxes shall be collected separately wherever applicable. The bill for each service should be raised separately and immediately after the services are rendered. The amount is charged and is based on the location of the service provider.
- 4.8 The Respondent had certain commitments with Complainant at the time of starting the assignment in respect of fees and billing. During this, unfortunately the Complainant started the difference of opinion with other directors of the company, the Respondent continued providing all types of professional services as and when required by the Complainant. The Respondent was engaged by the Complainant and his family for filing of their Income Tax Returns. It is pertinent to note that the family did not maintain proper personal books of accounts. Accordingly, the returns prepared and filed was a lengthy task and involved substantial man hours.
- 4.9 The Respondent and his staff have made various visits to Chandigarh for assistance and to provide services to the Complainant. The Respondent has visited Chandigarh at his own expense at least 5-6 times in a period of one month on an average. The expenses for the stay and travel of the Respondent and his staff were all borne by the Respondent only. The charges at the office and client site are a different world of consultancy, which are required to be billed. Hence a separate bill was issued for the same. The Respondent is based in Delhi and the professional services were provided at Chandigarh. As per the following admission of Complainant in FIR no. 164:

" ... the said Chartered Accountant who is based at Delhi though I was primarily carrying out my business activities at Chandigarh and therefore, as a matter of convenience, the said CA was regularly visiting Chandigarh for discussion of accounts and other purposes..."

This has been admitted and proved by the Complainant that services were being provided at Chandigarh on regular basis by visiting Chandigarh by the Respondent at his own cost. The fees charged are much less than recommended by ICAI. The Respondent got the assignment of Complainant on 18th January 2011.

- 4.10 The returns for the Assessment Year 2009-2010 and 2010-2011 were filed by the Complainant himself and these returns were filed much before the date of the fund were transferred to the Respondent. These returns were shown to have been filed just to implicate for the Respondent without jurisdiction in Delhi. It shows the mala fide intentions of the Complainant to harass the Respondent. It is pertinent to mention how tax can be paid by the Respondent in 2010 when no money has been transferred by the Complainant in 2010. The first transfer of money was on 07.05.2011 to the Respondent. The Respondent has paid taxes of Rs. 9,58,156/- on behalf of the Complainant and the same is not disputed in the rejoinder. Not a single cheque has been issued by the Complainant to the Respondent or his firm except four transfers through RTGS amounting to Rs. 24,28, 883/-. There was not a single receipt for any cash remuneration received. Before the said invoices not even a single invoice has been ever raised by the Respondent to the Complainant or his family.
- 4.11 The amount of tax was calculated by the office of Respondent and the return was handed over to the Complainant for deposit of tax and filing of return. The Complainant had himself deposited the return without complying with the direction of the office of Respondent. Moreover, Complainant has not made any dispute regarding the dates and amount paid to the Respondent. The return was supposed to be deposited in Chandigarh so, why it was filed in Delhi, when PAN was in record in Chandigarh.
- 4.12 The whole claim of the Complainant regarding removal from directorship and shareholding has been rejected by the Hon'ble NCLT and NCLAT.
- 4.13 FIR was filed against the Respondent in retaliation of the FIR lodged against the Complainant as he himself had committed fraud against his Co-Director and the Company by siphoning off an incredible amount of Rs 17 Crores which was brought to the notice of all concerned by the Respondent in the capacity as Statutory Auditor appointed by the consensus of directors of the Company.
- 4.14 The Respondent in his defense further placed on record his personal statement wherein he submitted that he got the assignment of Complainant and his wife on 18th January 2011. Later, Mr. Kamal Aggarwal compiled the books of both the entities on the request of the Complainant for the last 5-6 years. To supervise the Compilation, the Respondent made several visits to Chandigarh. The Fee agreed upon for the work was Rs.10 Lakh plus taxes.

4.15 The Respondent himself got verification of Income Tax Returns of the Complainant done from Income tax Authorities for the A. Y. 2009-10 and 2010-11 vide letter dated 9th June 2011 wherein the income tax official of the concerned ward has stated as under:

" As per record no such ITR have been received in the Office".

4.16 The Respondent had filed the ITR of Complainant for FY 2010-11 in respect of which summons/ notices was served on the Complainant by Income Tax Authorities which was duly attended by him. The Respondent had duly informed to the Complainant about the utilization of funds which have been received by him on various occasions for the work carried out by him.

- 4.17 The Income Tax Department issued notices from Jhandewalan, Delhi. There was other incriminating material for which a detailed reconciliation as per the books were made. A significant amount of time was spent. Apart from post proceedings, appearing during assessment, the Respondent also spent significant amount of time relating to notices. The Complainant in his Rejoinder submitted that Respondent and his associates had managed FIR No. 64 dated 23.02.2015 as counter blast to FIR 38 dated 31.01.2015 against him u/s 156(3) of Crpc at the direction of the Chief Judicial Magistrate. The Respondent has given detail of bills for visiting the office of Income Tax Department in Jhandewalan Extension, New Delhi to handle the Investigation but it should be put to strict sense for the same as the Respondent has received the said amount against Professional charges Bills to the funds given by the Complainant to pay taxes to the government exchequer. Taxes paid by the Respondent are for the succeeding period and not for previous period, as claimed by the Complainant. When Respondent has not yet started receiving the funds from the Complainant, how he was expected to deposit the tax of the Complainant.
- 4.18 The payment of service tax on the billed amount has been recorded in the books and taxes have been paid on the billed amount. The same has also been considered as a part of receipt and paid income tax on the income of the firm.

B. COMPLAINANT:

5. The Complainant, inter-alia, made the following submissions to substantiate his case:
- 5.1 It is found on record that for the Assessment Year 2009-10, the Complainant had paid the Respondent an amount of Rs.13,64,053/- towards deposit of income tax. Similarly, for the Assessment Year 2010-11, the Complainant had paid the Respondent an amount of Rs.4,63,824/- towards deposit of income tax. The Complainant also brought on record the bank statement showing the payment made to the Respondent as proof in this regard.

- 5.2 The Respondent had admitted in Written Statement the receipt of said amounts Rs.13,64,053/- and Rs.4,63,824/- in his account through RTGS in the Month of May 2011. The Respondent ought to have deposited the Income Tax for the assessment year 2009-10 and 2010-11, immediately on receipt of the said amount on 7th May 2011, 13th May 2011 & 26th May 2011. But admittedly the said amount was withheld and the same was not paid as Income Tax. The Respondent had also admitted the receipt of another amount through RTGS on 17.9.2011. In total, the Respondent had admitted the receipt of Rs.24,28,883/- from the Complainant. Having admitted the receipts of these payments by RTGS, with mala fide intention claimed that out of the said amount of Rs.24,28,883/- an exorbitant amount of Rs. 11,23,600/- was taken by him as fees for services rendered up to 31.3.2011 and an amount of Rs. 5,51,800/- was taken by him in respect of some enquiry conducted in the Income Tax Department. It was further claimed by the Respondent that the remaining amount of Rs. 4,01,059 was paid as tax for the Assessment year 2011-12 and other sums of Rs. 55,640/-, Rs. 55,457/- was paid as tax in May 2013 and another sum of Rs. 4,46,000/- was paid as tax in September 2013 for the Assessment year 2012-13. Therefore, it is evident that income tax return was not filed for the Assessment years 2009-10 and 2010-11.
- 5.3 In view of the fraud played by the Respondent against the Complainant and in view of the failure on the part of the Respondent to file Income Tax Return for the Assessment year in question, the Income Tax Department had issued demand notice dated 18.12.2017 and recovery proceeding dated 16.2.2018 for a sum of Rs.79,90,870/- against the Complainant by re-opening the assessment for the Assessment Year 2010-2011. If the Respondent had filed in the Income Tax Return and paid the Income Tax as soon as the payment was made by the Complainant in May 2011, today the Complainant would not suffer a Demand notice for a sum of Rs.79,90,870/-. On the one hand the Complainant has lost the funds to the Respondent for payment of Tax and on the other hand the Complainant has to suffer a demand notice with penalty as the Respondent failed to file the income tax return. A True copy of the Letter dated 3rd March 2017 issued by the Income Tax Department reopening the assessment for the Assessment Year 2010-2011, a true copy of the Assessment order dated 18th December 2017 passed by the Income Tax Department for alleged tax evasion for the Assessment Year 2010-11, a true copy of the Demand Notice issued by the Income Tax Department for the Assessment 2010-2011 dated 18th December 2017, a true copy of the Recovery Proceeding dated 16th February 2018 issued by the Income Tax Department for the Assessment 2010-2011 dated 18th December 2017 were provided by the Complainant.

OBSERVATIONS OF THE BOARD:

- 6.1 At the outset, the Board noted that the bone of contention in the instant case is that the ITRs acknowledgement of the Complainant for the AYs 2009-2010 and 2010-2011 are showing that the income tax has been deposited, whereas the Income Tax Department is denying to

have received the payment of tax in the account of the Complainant. The Board noted that Complainant brought on record two duly stamped Income Tax acknowledgements which are as follows: -

- A) Bearing No. 3202001635 dated 9th March 2010 for A.Y. 2009-10 wherein Rs.13,64,053/- had been duly paid as self- assessment tax.
- B) Bearing No. 3202001016 dated 29th September 2010 for A.Y. 2010-2011 TDS had already been deducted amounting to Rs- 254925/- and remaining amount of Rs 4,63,824/- has been paid as self-assessment tax, thus total tax amount paid was Rs. 7, 18,749/-.

6.2 The Board further noted that the Complainant paid Rs. 7,00,000/- through cheque dated 13.05.2011 and Rs. 6,64,000/- through RTGS dated 26th May 2011 to the Respondent for A.Y. 2009-2010. Cheque dated 29th April 2011 for Rs. 4,63,824/- for assessment year 2010-2011 was also paid to the Respondent by the Complainant. On perusal of the documents on record, the Board noted that the following had been the fund movement between the Complainant and the Respondent:

Date	Description	Amount Paid by the Respondent (Rs.)	Amount Received by the Respondent (Rs.)
07-05-2011	Through Bank RTGS	-	4,63,824
13-05-2011	Through Bank RTGS	-	7,00,000
26-05-2011	Through Bank RTGS	-	6,64,000
17-09-2011	Tax Paid-Sanjay Jain	401059	-
17-09-2011	Through Bank RTGS	-	6,01,059
16-05-2012	Fee Bill- Up to 31-03-2011	11,23,600	-
07-05-2013	Tax Paid- Shamita Jain	55,640	-
07-05-2013	Tax Paid- Shamita Jain	55,457	-
16-09-2013	Tax Paid- Shamita Jain	4,46,000	-
28-02-2014	Bill for Enquiry Handling by Investigation Wing,	5,61,800	-

	Income Tax Department, Jhandewalan		
		26,43,556	24,28,883

The Board also noted that the Respondent brought on record copy of the bill dated 16th May 2012 amounting to Rs. 11, 23,600/- raised by the Respondent on the Complainant with respect to professional charges for Income Tax matters and the copy of the bill dated 28th Feb 2014 amounting to Rs. 5,61,800/- raised by the Respondent on the Complainant with respect to professional charges for handling of the matters of Investigation Wing, Income Tax Department, Jhandewalan, N.Delhi.

- 6.3 The Board noted that Shri Lakhmir Singh (Investigation Officer/IO) in his reply dated 19th January 2017 to the anticipatory bail application of the Respondent filed in FIR No. 164 before the Honorable Court of Sh. Jasbir Singh Sidhu, ASJ, UT, Chandigarh Court, inter-alia, stated as under: -

“During the course of investigation, relevant record from the concerned department has been procured to seek the authenticity of the allegations levelled by the Complainant. Original income tax returns have also been taken into police possession from CA. Kapil Agarwal”.

- 6.4 Also, during the course of hearing on 11th January 2024, the Board posed certain questions to the witness CA. Rahul Khurana which were answered by him. The Board provided an opportunity to the Respondent to cross-examine the said witness which was exercised by him. The Board also provided the Complainant the opportunity to cross-examine the said witness who chose not to cross-examine the said witness. Thus, the said witness was discharged by the Board. However, since the witness was associated with the Complainant since 2018 which period was beyond the period of misconduct as alleged in the complaint, his deposition was not considered to be of much relevance to examine the conduct of the Respondent.
- 6.5 On the other hand, the Board noted that there is on record a letter dated 9th June 2011 issued by the Respondent firm wherein the Income Tax Officer was requested for the verification of income tax returns for A.Y 2009-2010 and A.Y. 2010-2011 of Complainant

and the Assistant Commissioner of Income Tax in response on 14th June 2011 clearly mentioned as under:

“As per record no such ITR have been received in the Office.”

Also, the Income Tax Department in letter No. NMS/ADDPJ7989B/1356798/8964 dated 28th Feb 2017/3rd March 2017 stated that Complainant’s ITR for A.Y. 2010-2011 has not been filed.

The Board also noted that the Complainant brought on record copy of the Income Tax Assessment Order of the Complainant for the AY 2010-11 dated 18th December 2017 clearly stating that the return of income had not been filed.

6.6 The Board also noted that as per the Income Tax Return acknowledgement for the AY 2011-12, the return had been filed using the digital signature of the Complainant on 29th September 2011. Further, as per the certified true copy of the letter dated 2nd April 2011 addressed by the Complainant to the Respondent firm, his digital signature/or the documents for his digital signature were with the Respondent firm and the Respondent firm was authorized to keep it in safe custody for the purpose of income tax returns, service tax returns and filing of necessary documents with the Registrar of Companies for the companies in which he is designated as a director, the list of which included 10 Pvt. Ltd. companies and personal income tax returns.

6.7 Thus, on a detailed perusal of the submissions and documents on record especially the fund movement between the Complainant and the Respondent and the connect of the Respondent firm in auditing the accounts of the company and providing other ancillary services and having regard to the preponderance of probabilities, the Board was of the view that the role of the Respondent in the alleged provisioning of forged and fabricated acknowledgement receipts of payment of income tax filing of income tax return of the Complainant which depict not only payment of income tax but also filing of Income Tax returns for the AY 2009-10 and 2010-11 cannot be ruled out. In view of the same, the Board held the Respondent **GUILTY** in respect of the charge alleged.

CONCLUSION:

7. Thus, in conclusion, in the considered opinion of the Board, the Respondent is **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.

Sd/-

CA. Rajendra Kumar P

(Presiding Officer)

Sd/-

Ms. Dolly Chakrabarty (IAAS, retd.)

(Government Nominee)

Sd/-

CA. Priti Savla

(Member)

DATE: 02-02-2024