

BOARD OF DISCIPLINE

(Constituted U/S 21A of the Chartered Accountants Act 1949)

Findings under Rule 14 (9) read with Rule 15 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007

CORAM: (PRESENT IN PERSON)

CA. Rajendra Kumar P, Presiding Officer.
Ms. Dolly Chakraborty, (I.A.A.S, Retd.), Government Nominee
CA. Priti Savla, Member

IN THE MATTER OF:

CA. Manmohan Khemka, (M. No. 092805), New Delhi in Re:
205, Triveni Plaza, 17-A/56, W.E.A.
Karol Bagh, New Delhi 110 005

Date of Final Hearing : **28th March 2024.**
Place of Final Hearing : **ICAI Bhawan, New Delhi.**
Party present (Respondent) : **CA. Manmohan Khemka (In Person).**

FINDINGS:

BRIEF BACKGROUND OF THE CASE:

1. A reference was received from the Legal Section of the Institute through the then Acting Secretary vide Note dated 02nd June 2020 wherein it was alleged against CA. Manmohan Khemka (M. No. 092805), New Delhi (hereinafter referred to as the "Respondent") that the Legal Section observed that Respondent was spreading misleading information through his Facebook account in relation to provisions of New Code of Ethics in the matter of revenue from a single client which were false, misleading, devoid of complete facts which created panic, anxiety, confusion and chaos amongst CA fraternity. In this regard, it was noted that a notice was issued to him by Legal Section of the Institute vide email dated 16th May 2020. In response to the same, the Respondent submitted his reply vide email dated 23rd May 2020, on the allegations raised against him. Thereafter, the said matter was forwarded to Director (Discipline) for suitable action against him.

M

CHARGES ALLEGED:

2. The charges alleged against the Respondent pertain to misrepresentation and dissemination of misleading information regarding the New Code of Ethics for Chartered Accountants. The Respondent is accused of selectively quoting provisions from the Code of Ethics to create a false impression specifically regarding the acceptance of 15% fees from a single client. Furthermore, the Respondent is charged with continuing to spread misinformation even after the issuance of clarifications by the Institute of Chartered Accountants of India (ICAI), thereby causing confusion and apprehension among members of the profession on social media. This conduct is deemed reckless and harmful to the profession, as it perpetuates false beliefs and disrupts the understanding of Ethical guidelines within the accounting community.

BRIEF OF THE PROCEEDINGS HELD:

S. No.	Date of Hearing	Status of Hearing(s)
1	22 nd August 2023	Adjourned at the request of the Respondent.
2	28 th March 2024	Matter is heard and the hearing is concluded.

BRIEF SUBMISSIONS OF THE RESPONDENT:

3. The Respondent vide his Written Statement received on 17th August 2020 submitted as under:
- i. That the Respondent has posted certain false and misleading comments on his Face book page on the Revised Code of Ethics applicable w.e.f., 01.07.2020 is not true and is incorrect. Instead, the post gives the substance of the provision in brief and refers to New Code of Ethics which is a clear indication to the reader that if he is covered under the situation given under the post, he shall refer to New Code of Ethics.
 - ii. That the contention regarding the post on 10th May 2020 stating that CA. Firms cannot have more than 15% of its total fees from one client group as per the New Code of Ethics applicable w.e.f 01.07.2020 is false and misleading, is not true and is incorrect. Rather, the post clarifies the substance of the provision and refers to New Code of Ethics, which is a clear indication to the reader that if he is covered under the situation given under the post, he shall refer to New Code of Ethics. In fact, in case a member is not covered by the safeguard suggested, in terms of Code of Ethics, he cannot accept the assignment as the Code of Ethics has to be followed mandatorily.

M

- iii. That the contention that the post has been made with a view to cause confusion in the minds of the members of the profession is also not true and is baseless. Rather, the post is intended to create awareness about the New Code and to make the members cautious to refer the Code if the members fall under this situation. Of course, this provision as initially notified, in respondent's view, is "A Big Deterrent for Small, Medium and New Practitioners", and that is what the respondent's interpretation on the impact of law and is very much appropriate. This law has been so framed that it is very difficult to understand the exact provision and its serious impact. He further submits that the respondent's intent was only to clarify the provision and make the members aware of its impact on small and medium practitioners and therefore, an opinion on any matter of interpretation cannot be treated giving rise to a cause of action as an interpretation can be wrong or right, but that does not mean that it is either false or misleading.
- iv. In view of all the above submissions, the Respondent submitted that the whole allegations made by the Informant and the prime facie opinion of the Director (Discipline) that 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 Act, are baseless and against the Respondent's Fundamental Right of Freedom of Speech and Expression.

OBSERVATION OF THE BOARD:

4. The Board deliberated on the matter concerning the Respondent's social media post regarding the Revised Code of Ethics, specifically while carefully noting Section 410.4 of the Revised Code of Ethics, as reproduced as hereunder: -

"R410.4 Where for two consecutive years, the total gross annual professional fees ("total fees) from the audit client and its related entities represent more than 15% of the total fees received by the firm expressing the opinion on the financial statements of the client, the firm shall:

(a) Disclose to those charged with governance of the audit client the fact that for two consecutive years, the total of such fees represents more than 15% of the total fees received by the firm.

Provided that no such ceiling on the total fees of the Firm would be applicable where such fees does not exceed five lakhs of rupees in respect of a firm including fees received by the firm for other services rendered through the medium of a different firm or firms in which such member or firm may be a partner or proprietor.

Provided further that no such ceiling on the total fees of a Firm would be applicable in the case of audit of government Companies, public undertakings, nationalised banks, public financial institutions or where appointments of auditors are made by the Government; and

M

(b) Discuss whether either of the following actions might be a safeguard to address the threat created by the total fees for two consecutive years received by the firm from the client, and if so, apply it:

(i) Prior to the audit opinion being issued on the third year's financial statements, a professional accountant, who is not a member of the firm expressing the opinion on the financial statements, performs an engagement quality control review of that engagement; or a professional body performs a review of that engagement that is equivalent to an engagement quality control review ("a pre-issuance review"); or

(ii) After the audit opinion on the third year's financial statements has been issued, and before the audit opinion being issued on the fourth year's financial statements, a professional accountant, who is not a member of the firm expressing the opinion on the financial statements, or a professional body performs a review of the second year's audit that is equivalent to an engagement quality control review ("a post-issuance review").

5. The Board while acknowledging the significance of the Institute of Chartered Accountants of India (ICAI) and its role in regulating the profession of Chartered Accountancy, as well as its continuous efforts to uphold professional standards and integrity observed that the Respondent's post on Facebook undoubtedly generated discussions amongst certain members of the profession regarding the interpretation of the revised provision of the Code of Ethics, particularly the provision related to the limitation on fees from a single client group, as above. It was noted that the Respondent's intention, as submitted by the Respondent during the proceedings, was to initiate a debate rather than to defame or cast any negative remarks on the reputation of either the Council or the Institute.
6. Besides above, the Board also took into consideration the subsequent modifications to the provision in question, as mentioned by the Respondent. Despite these modifications, the Respondent maintained that the purpose of the post was to foster dialogue and bring attention to potential issues within the profession.
7. The Board also recognizes the Respondent's right to Freedom of Speech and Expression, which includes the ability to express opinions and engage in the exchange of views in the matters relevant to one's profession while emphasizing the importance of responsible communication, especially when it pertains to matters that could impact the reputation and integrity of the profession and regulatory body in absence of the exercise of due care.

M

8. Considering the above observations and while noting that the Respondent's post has initiated debate on the social media and raised questions about the interpretation of the Code of Ethics, yet there was no evidence to suggest malicious intent or deliberate efforts on the part of the Respondent to defame the Institute. The Board accordingly recommends that the matter should be closed without further action.

CONCLUSION:

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 of Rule 15 (2) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

✓

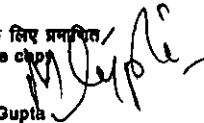
Sd/-
CA. Rajendra Kumar P
Presiding Officer

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

Sd/-
CA. Priti Savla
Member

Date: 07-05-2024

सही प्रतिलिपि होने के लिए प्रमाणित
Certified to be true copy


मीनू गुप्ता / Meenu Gupta
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनिक निदेशालय / Disciplinary Directorate
इंस्टिट्यूट ऑफ चार्टर्ड एकाउंटेंट्स ऑफ इंडिया
The Institute of Chartered Accountants of India
आईसीएआई भवन, विजय नगर, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vistwa Nagar, Shaadra, Delhi-110032