



भारतीय सनदी लेखाकार संस्थान

(संसदीय अधिनियम द्वारा स्थापित)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

(Set up by an Act of Parliament)

PPR-227/2016-DD/106/INF/2016/DC/1580/2022

[DISCIPLINARY COMMITTEE [BENCH-II (2024-2025)]]

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

ORDER UNDER SECTION 21B (3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATIONS OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007

[PPR-227/2016-DD/106/INF/2016/DC/1580/2022]

In Re:

CA. Mohandas Belle Shetty (M. No. 031256)

Office No. 10, Krishna Cottage,

Dattapada Road No. 2,

Br. Dattapada Phatak,

Nr. Welcome Hotel

Mumbai – 400066.

.....Respondent

Members Present:-

CA. Ranjeet Kumar Agarwal, Presiding Officer (in person)

Mrs. Rani S. Nair, IRS (Retd.), Government Nominee (through VC)

Shri Arun Kumar, IAS (Retd.), Government Nominee (in person)

CA. Sanjay Kumar Agarwal, Member (in person)

CA. Cotha S Srinivas, Member (through VC)

Date of Hearing : 10th April, 2024

Date of Order : 28th May 2024

1. That vide Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Disciplinary Committee was, inter-alia, of the opinion that **CA. Mohandas Belle Shetty (M. No. 031256)** (hereinafter referred to as the '**Respondent**') is **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said Findings, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and a communication was addressed to him thereby granting opportunity of being heard in person / through video conferencing and to make representation before the Committee on 10th April 2024.

3. The Committee noted that on the date of hearing held on 10th April 2024, neither the Respondent was present before it nor was there any intimation as regard his non-appearance

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despite the due delivery of the notice for hearing and copy of the Findings of the Disciplinary Committee upon him.

3.1 The Committee also noted that the soft copy of the Findings of the Disciplinary Committee and the Notice for the hearing had also been sent to the email address available in the member records of ICAI. As per email delivery intimation for the said communication(s), the delivery of the said email(s) had been completed.

3.2 The Committee further noted from the member records of ICAI as under:

- (a) 'KYM' Form of the Respondent had been submitted and the same was pending with the comment '*ask for correction*'.
- (b) Around 1055 UDINs had been generated by the Respondent during the year 2023.

3.3 Furthermore, the Committee noted that the Respondent neither submitted his written submissions/documents at Prima Facie Opinion stage nor during the course of hearing. The Committee also noted that the aforesaid case was listed for hearing before it on four occasions and the Respondent did not appear even once during the hearing despite the due delivery of the communication for hearing. Accordingly, the case was concluded ex-parte on 10th August 2023.

3.4 Thus, the Committee was of the view that all possible efforts (speed post and email) have been made to ensure the delivery of the communication for hearing upon the Respondent, but he chose not to represent before the Committee. Keeping in view the provisions of Rule 19(1) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007, the Committee was of the view that the Respondent has nothing more to represent before it and thus, decided to consider his case for award of punishment on the basis of material available on record.

4. The Committee considered the reasoning as contained in Findings holding the Respondent Guilty of Professional Misconduct.

5. Keeping in view the facts and circumstances of the case as well as the material on record, the Committee noted that the present matter relates to certification of 99 Form 15CA/15CB by the Respondent in respect of the Firm M/s Aadi Enterprises without verifying the credentials of the said Firm on the basis of which Informant Bank had allowed the said firm an Advance Import payment and thereby suffered losses. Before certifying the aforesaid Forms, the Respondent was required to verify the agreement between the remitter and the beneficiary and relevant documents and books of accounts. Despite offering sufficient opportunities, the Respondent failed to appear before the Committee. The Committee from the list of UDIN generated by the Respondent noted that the Respondent had generated around 4865 UDIN's in last 4-5 years, which proves that he is active in his day-to-day affairs and continuously generating UDIN. However, he did not care to appear before the Committee which shows his casual approach.



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5.1 The Committee on perusal of documents noted that the style, signature and stamp of the different exporters/issuers of the said invoices on the Proforma invoice and the format of all the said Proforma invoices were quite similar. Further, the Buyer's Order no. and date mentioned in all Proforma Invoices were verbal and even the addresses of some of the exporters specified in the Proforma invoice were the same.

5.2 The Committee in absence of any defense from the Respondent held that the Respondent failed to exercise due diligence and had failed to ensure the compliance of the provisions of the Income Tax Act, 1961 while issuing and certifying Form 15-CB. The Committee also inferred that non-appearance of the Respondent before it shows that he has nothing to submit and he accepts the charge leveled against him.

5.3 Hence, professional misconduct on the part of the Respondent is clearly established as spelt out in the Committee's Findings dated 7th February 2024 which is to be read in consonance with the instant Order being passed in the case.

6. Accordingly, the Committee was of the view that ends of justice will be met if punishment is given to him in commensurate with his professional misconduct.

7. Thus, the Committee ordered that the name of CA. Mohandas Belle Shetty (M. No. 031256), Mumbai be removed from the Register of Members for a period of 01(One) Year.

Sd/-

(CA. RANJEET KUMAR AGARWAL)
PRESIDING OFFICER

Sd/-

(MRS. RANI S. NAIR, IRS RETD.)
GOVERNMENT NOMINEE

Sd/-

(SHRI ARUN KUMAR, IAS RETD.)
GOVERNMENT NOMINEE

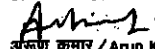
Sd/-

(CA. SANJAY KUMAR AGARWAL)
MEMBER

Sd/-

(CA. COTHA S SRINIVAS)
MEMBER

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
The Institute of Chartered Accountants of India
आर्य समाज भवन, पितास नगर, शाहदरा, दिल्ली-110032
Arjuna Bhawan, Pithas Nagar, Shahdara, Delhi-110032

In re: CA. Mohandas Belle Shetty (M. No. 031256)

CONFIDENTIAL

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

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

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

File No. : [PPR-227/2016-DD/106/INF/2016/DC/1580/2022]

In the matter of:

CA. Mohandas Belle Shetty (M. No.- 031256) of M/s Mohandas & Co., Mumbai
in Re:

CA. Mohandas Belle Shetty (M.No. 031256)

Office No. 10, Krishna Cottage,

Dattapada Road No. 2,

Br. Dattapada Phatak,

Nr. Welcome Hotel

Mumbai – 400066

.....Respondent

MEMBERS PRESENT:

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

Mrs. Rani Nair, I.R.S. (Retd.), Government Nominee (Present in person)

Shri Arun Kumar, I.A.S. (Retd.), Government Nominee (Present in person)

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

CA. Sridhar Muppala, Member (Present through Video Conferencing Mode)

DATE OF FINAL HEARING: 10.08.2023 (through physical/video conferencing mode)

PARTIES PRESENT:

Respondent: Not Present

BACKGROUND OF THE CASE:

1. The brief background of the case is as under :
 - a. That a letter dated 20th June 2016 (Page A2 to A3 of Prima Facie Opinion) was received from Shri. S. Bharat Kumar, Deputy General Manager, Inspection & Audit, Bank of Maharashtra, Pune (hereinafter referred to as "Informant") containing allegations against CA. Mohandas Belle Shetty (M. No. 031256), Proprietor, M/s. Mohandas & Co., Mumbai (hereinafter referred to as the 'Respondent').
 - b. According to Informant, the Respondent Firm had issued 15CA/15CB certificates to Mr. Vijay Bhandari, Proprietor, M/s AADI Enterprises (hereinafter referred to as the 'Firm'), who was having current account no. 60228721937 with its MSME Branch, Thane for advance import payment to HongKong and China.
 - c. Out of the total of 99 such 15CA/15CB certificates found in the Bank branch, the Respondent confirmed issuing 88 certificates and denied issuing the remaining 11 certificates. The Respondent firm confirmed issuing the 10 unused 15CA/15CB certificates that were also found in the Bank branch where no advance import payment was made.
 - d. According to the Informant, the Respondent firm issued the 15CA/15CB certificates to one Mr. Ankit Jain (alias Mr. Aniket Jain), who approached the Respondent firm as a walk-in customer, on the basis of original invoice copies submitted by Mr. Ankit Jain.
 - e. The 15CA certificate was generated online from Income tax website, as the proprietor has to sign the 15CA certificate, a printout is given to Mr. Ankit Jain by the Respondent Firm for obtaining the signature of the Proprietor of the firm.
 - f. Mr. Ankit Jain used to bring the signed 15CA certificate with the signature of Mr. Vijay Bhandari and on that basis the Respondent Firm issued, 15CB certificate manually. The proprietor of the firm never visited the Respondent Firm.
 - g. After the Bank of Baroda scam, the proprietor of the firm and Mr. Ankit Jain are not traceable and no bill of entry has been submitted to the bank for the

Advance Import Payment transactions done through the account of the Firm.

- h. The Informant Bank has allowed advance import payment to the Firm on the basis of the 15CA/15CB certificates issued by the Respondent Firm.
- i. On visiting the Respondent Firm for the whereabouts of the Proprietor of the firm, and Mr. Ankit Jain, the Respondent Firm does not have any details about the Proprietor of the Firm and Mr. Ankit Jain. There was failure on the part of the CA firm which has issued 15CA/15CB certificates without verifying the credentials of the Firm or his accomplice, Mr. Ankit Jain

CHARGES IN BRIEF:-

2. The Committee noted that the charge against the Respondent is that the Respondent did certification of Form 15CA/15CB in respect of the Firm without verifying the credentials of the Firm on the basis of which Informant Bank had allowed Firm Advance Import Payment.
3. The Director (Discipline) had, in his Prima-facie opinion dated 2nd June, 2020, noticed that
 - a. the Respondent had failed to submit his written statement to defend himself against the allegations levelled by the Informant.
 - b. Mere issuance of such a certificate (Form no. 15CB) cannot be directly related to the remittance of money from India to the bank accounts maintained in foreign countries.
 - c. There is no provision in Form 15CB which requires the Chartered Accountant to verify either the final delivery of export before remittance or the credential of the Company supplying goods/services. Form 15CB only states tax deducted at source on such remittance.
 - d. Hence, such extra vigilance cannot be expected from a professional rendering the normal course of his services.
 - e. Further the Informant has also failed to submit the information, sought from him under terms of Rule 8(5), which would have proved the

contention of the Informant that the Respondent admitted that he had issued the certificates without checking the credentials of Firm as alleged by the Informant bank.

f. No investigation report or any other documentary evidence has been brought on record by the Informant. Further, no lacuna is cited in Form 15CA by the Informant. Hence, no act of Professional Misconduct can be levelled on the part of Respondent.

4. The Director (Discipline) accordingly opined that it would have been better, if the Respondent could have come forward with his defence by way of submission of his written statement on the allegations. However, in absence of any evidence to prove that the Respondent was negligent in his duty, he is held prima facie not guilty on the allegation.

5. 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 Not Guilty of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

6. The Committee noted that the said matter was placed for consideration of Prima Facie Opinion before the Board of Discipline in its 212th meeting held on 17th June, 2022 wherein the Board on consideration of the same noted that

a. Around 99 certificates in Form 15 CB had been issued by the Respondent in respect of the firm M/s. Aadi Enterprises without verifying the credentials of his proprietor.

b. On perusal of the copy of Proforma Invoices issued by different exporters to the said firm on the basis of which the alleged certificates had been issued by the Respondent which have been brought on record by the Informant Department, the Board observed that the manner, the style, signature and stamp of the different exporters/issuers of the said invoices on the Proforma invoice and the format of all the said Proforma invoices were quite similar.


- c. Further, the Buyer's Order no. and date in all the Proforma Invoices were verbal and even the address of some of the exporters specified in the Proforma invoice was the same.

Accordingly, the Board of Discipline was not convinced that the alleged certificates were issued by the Respondent on the basis of said Proforma invoices which were running into several lakhs of dollars and were executed on the basis of verbal agreement.

7. The Board of Discipline was of the view that the Respondent as a certifying professional ought to have exercised professional skepticism and looked into this aspect before issuing the alleged certificates. The Board also noted that the Respondent did not submit his written statement at the prima facie stage. Thus, the Board **did not agree** with the prima facie opinion of the Director (Discipline) that the Respondent is **NOT GUILTY** of Professional Misconduct/ Other Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 and accordingly decided to refer the case to the Disciplinary Committee to proceed under Chapter V of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 in terms of the provisions of Rule 9(3)(b) of the aforesaid Rules.
8. The said item in the Schedule to the Act states as under:

Item (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" 

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. | 31.05.2023 | Fixed and Adjourned in absence of Respondent |
| 2. | 22.06.2023 | Fixed and Adjourned in absence of Respondent |
| 3. | 24.07.2023 | Fixed and Adjourned in absence of Respondent |
| 4. | 10.08.2023 | Concluded. |

10. On the day of the first hearing, held on 31st May, 2023, the Committee noted that neither the Respondent was present, nor any intimation was received from his side despite due delivery of notice to him. Thereafter, the Committee, on account of natural justice, decided to provide one more opportunity to the Respondent and accordingly adjourned the case to a future date.
11. On the day of the second hearing held on 22nd June, 2023, the Committee noted that the Respondent was not present, nor any intimation was received from his end despite notice/email being duly served upon them. The Committee looking into grounds of natural justice decided to give final opportunity to the Respondent to present his representations, if any. Further, the Committee, while adjourning the matter, directed the Office to check UDIN details of the Respondent and Whether KYC compliance had been made by the Respondent.
12. On the day of the third hearing held on 24th July, 2023, the Committee noted that neither the Respondent was present, nor any intimation was received from him despite due delivery of notice served upon him. The Committee decided to give one more opportunity to the Respondent and accordingly decided to adjourn the hearing to a future date.
13. On the day of final hearing held on 10th August, 2023, the Committee noted that neither the Respondent was present, nor any intimation was received from his

end despite notice/email duly served upon him. The Committee noted that the matter was fixed and adjourned multiple times earlier in the absence of the Respondent. The Committee noted that the notice for appearance before the Committee was sent to Respondent through the Mumbai office as well. However, the Respondent chose not to appear, which shows the casual approach of the Respondent in dealing with the matter. The Committee in the absence of Respondent decided to conclude the case ex-parte. The Committee in absence of any defence from the Respondent, considered the documents on record vis-à-vis views of the Board of Discipline and, accordingly, concluded the hearing.

FINDINGS OF THE COMMITTEE

14. The Committee noted that the Respondent had not submitted his written statement or any documents in his defence.
15. The Committee noted that the present matter relates to certification of 99 Form 15CA/ 15CB in respect of the Firm without verifying the credentials of the Firm on the basis of which Informant Bank had allowed Firm Advance Import Payment and suffered losses. Form 15CA is a declaration form that must be submitted electronically by the remitter to the bank before paying a non-resident while Form 15CB is a certificate issued by a Chartered Accountant (CA) to verify the deduction of taxes and the completion of other regulatory requirements.
16. The Committee noted that in Form 15CB the Respondent certified as under:

I/We have examined the agreement (wherever applicable) between
Mr./Ms./M/s*.....Remitters)and Mr./Ms./M/s*
..... (Beneficiary) requiring the above remittance as well as
the relevant documents and books of account required for ascertaining the nature
of remittance and for determining the rate of deduction of tax at source as per
provisions of Chapter- XVII-B.*

17. On perusal of the above certification, the Committee noted that before certifying the aforesaid form, the Respondent was required to verify the agreement between the remitter and the beneficiary and relevant documents and books of accounts. The Committee noted that despite offering sufficient opportunities, the Respondent failed to appear before it.
18. The Committee from the list of UDIN generated by the Respondent noted that the Respondent has generated around 4865 UDIN's in last 4-5 years out of which 910 UDIN's were generated by him in the year 2023 itself, which proves that he is active in his day-to-day affairs and continuously generating UDIN however does not care to appear before the Committee which shows his casual approach.
19. The Committee further noted that the Respondent failed to bring on record any evidence in his defence neither at the prima-facie stage nor at the hearing stage.
20. The Committee on perusal of documents agreed with the views of the Board of Discipline that the style, signature and stamp of the different exporters/issuers of the said invoices on the Proforma invoice and the format of all the said Proforma invoices were quite similar. Further there is written evidence regarding the Buyer's Order no. and date mentioned in all the Proforma Invoices and even the addresses of some of the exporters specified in the Proforma invoice were the same.
21. The Committee in absence of any defence from the Respondent held that the Respondent failed to exercise due diligence and had failed to ensure the compliance of the provisions of the Income Tax Act, 1961 while issuing and certifying form 15CB. The Committee also inferred that non-appearance of the Respondent before it shows that he has nothing to submit and he accepts the charge levelled against him.

22. Accordingly, the Committee holds the Respondent **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

CONCLUSION

23. 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 **GUILTY** of Professional Misconduct falling within the meaning of Item (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

Sd/-

(CA. RANJEET KUMAR AGARWAL)

PRESIDING OFFICER

Sd/-

(MRS. RANI NAIR, I.R.S. RETD.)

GOVERNMENT NOMINEE

Sd/-

(SHRI. ARUN KUMAR, IAS, RETD.)

GOVERNMENT NOMINEE

Sd/-

(CA. SANJAY KUMAR AGARWAL)

MEMBER

Sd/-

(CA. SRIDHAR MUPPALA)

MEMBER

DATE: 07th February, 2024

PLACE: New Delhi

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श्रीमती श्रुति गर्ग / CA. Shrutti Garg
सहायक निदेशक / Assistant Director
अनुशासनात्मक निदेशालय / Discipline
इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स
The Institute of Chartered Accountants
आईसीएआई भवन, विश्वनाथ नगर,
ICAI Bhawan, Vishwanath Nagar, S

0032