

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
Smt. Dolly Chakrabarty, IAAS (Retd.), Government Nominee
CA. Priti Savla, Member**

IN THE MATTER OF:

Shri Sudhanshu S. Gautam

Deputy Director of Income Tax (Inv.)
Unit-1 (2), Aaykar Bhawan, Annexe Building
P-13, Chowringhee Square, 4th Floor
Kolkata – 700 073.....

Complainant

Versus

CA. Bijay Kumar Dokania

29-B, Rabindra Sarani
3rd Floor, Room No. 2E
Kolkata – 700073

Respondent

**Date of Final Hearing : 20th March 2024
Place of Final Hearing : ICAI Bhawan, Kasba, Kolkata**

PARTIES PRESENT:

**Shri Shailendra Prasad Kanaujia–Counsel for the complainant (In person)
CA. A P Singh – Counsel for Respondent (Through VC)**

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FINDINGS:

CHARGES ALLEGED:

1. The Complainant has alleged that the Respondent in his statement on oath recorded under Section 131 of the Income Tax Act, 1961, had admitted as under:
 - a) That he was involved in providing accommodation entries in the form of pre-arranged Long Term Capital Gain (LTCG) through M/s BSR Finance and Construction Ltd. and various other shell/paper entities controlled and managed by him in lieu of commission to the Malani and Gadhiya family. The employees of the Respondent and his close associates were the directors in these shell/paper entities controlled and managed by the Respondent. Thus, the Respondent was indulged in falsification of books of accounts and helping in large scale evasion of taxes.
 - b) The Respondent received cash from beneficiary companies for providing accommodation entry in form of LTCG.
2. Respondent has also submitted an affidavit admitting that he has provided accommodation entries in the form of pre-arranged LTCG, thereby helping in large-scale evasion of taxes.
3. Respondent has willfully made or caused entries which are false and knows to be false and not true and thereby indulged in falsification of books of accounts or documents for various beneficiaries.

BRIEF OF PROCEEDINGS:

4. The details of the hearings fixed and held in the said matter, are given as under:

S. No.	Date of Hearing(s)	Status of Hearing(s)
1.	3 rd May, 2023	Matter has been adjourned at the request of the Respondent.
2.	28 th July 2023	Adjourned the matter with a direction to give final opportunity to the Respondent.
3.	20 th March 2024	Matter is heard and the hearing is concluded.

BRIEF SUBMISSIONS OF THE RESPONDENT:

5. The Respondent in his defence, inter-alia, submitted as under: -
 - 5.1 He denies and disputed the conclusion of the Director (Discipline) and stated that such conclusion has been made without proper understanding

of the facts of the case and without taking into consideration the provisions of law and without application of mind.

- 5.2 The Respondent was not charged for any misconduct under Clause (2) of Part-IV of the First Schedule of the Chartered Accountants Act 1949 by the complainant in Form-I as provided by the complainant and he has not been provided with a copy of the opinion of the Council and in absence of the same, the Director (Discipline) could not have formed the Prima Facie Opinion and thus, the opinion of the Director (Discipline) cannot be taken as a substitute for the opinion of the Council.
- 5.3 The complainant had provided narrative of the allegations and charges of professional and other misconduct which were levied under Clauses (6) & 7 of Part-I of the Second Schedule to the Act and not under Clause (2) of Part-IV of the First Schedule to the Act under the Other Misconduct.
- 5.4 The allegation has been made against the Respondent based on a statement recorded at the office of the DDIT (Inv), Unit- (2) wherein under Q. No. 15, certain references have been made to the names of Shri Bikash Sureka and Sri M. Bhiwaniwala whose statements have never been disclosed or shown to the Respondent. The Respondent requested the copies of the statements of the beneficiaries recorded under Q. No. 7 on 28th May 2014, by the Complainant-Department or any other evidence confirming the facts that the Respondent has engaged in providing accommodation entries in lieu of some commission, which has not been provided to him.

OBSERVATIONS OF THE BOARD:

6. On perusal of the documents and submissions on record, the Board observed that the Respondent raised certain technical objections regarding the admissibility of the case and decided to deal with them before arriving at its Findings.
 - 6.1 As regard the objection of the Respondent that specific clause of the misconduct had not been defined by the complainant, the Board was of the view that it is trite that a complainant is required as per law to state the allegations which are to form a factual foundation for an adjudicating authority to exercise jurisdiction and even if an incorrect provision of law/no clauses is mentioned by the complainant in Form- I, that alone cannot be a ground to dismiss a complaint, if otherwise the authority has the jurisdiction to entertain the complaint.

Further, though the provision of Rule 3 is couched in a "mandatory form" by use of words such as "shall" and appear to be mandating a procedure that must be necessarily followed. However, mere use of language which

suggests or purports to suggest a "mandate" may not alone be sufficient to regard a procedural rule to be mandatory to the extent that its non-compliance could vitiate the entire proceeding.

While coming to the said view, the Board took into consideration the following observations of the Hon'ble Supreme Court in the matter of Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Anr. (Reported in AIR 2006 SC 269) as under:

"Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use."

Thus, non-mentioning of clauses can at the highest be treated as "technical defect." Infact, the procedure to be adopted in case of defective complaint is that the defect, if pointed out, and not cured by the complainant, it is incumbent upon the Director (Discipline) to form a prima facie opinion of no case and recommend its closure. However, the Board of Discipline is vested with discretion to ignore the recommendation, if it deems fit, and may proceed further with the matter.

The onus to formulate a prima facie opinion as to the misconduct rests with the Director (Discipline) and therefore, premised on the pleadings filed which contains the allegations and documents placed on record, it is the Director (Discipline) which has to first formulate a prima facie opinion on the alleged misconduct.

Therefore, notwithstanding the assertions as to the particular clause of misconduct by a complainant, the Director (Discipline) shall, after perusing the material available, conclude as to existence or otherwise of the misconduct alleged. This is also apparent from the provisions of various sub clauses of Rule 9 (2)(a) of the Misconduct Rules, 2007, which require the Director (Discipline) to place the matter before the Board of Discipline, if the misconduct alleged falls within the First Schedule and before the Disciplinary Committee if the alleged misconduct falls within the Second Schedule or both under the First and Second Schedule. This also supports the view that the sifting of the allegations to identify the clauses of misconduct is to be performed by the Disciplinary Directorate.

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This issue can also be addressed from the perspective of the status of the complainant. The requisite provision in the statute or under the Rules does not prescribe as to who can file a complaint under the provisions of the Act alleging misconduct by a member. Therefore, the complainant can be a statutory authority, a member of the Institute who is well versed with the provisions of the Act or even a member of public who may not be familiar with the provisions of the Act. In such a scenario, to give a pedantic interpretation to the provisions of the Act and the Rules making it incumbent on a complainant to specify clauses of misconduct, would be denying the remedy otherwise available under the statute.

If the allegations stated in the complaint do not fall within any specified clauses of professional misconduct, the same may however be a case of "other misconduct" and the Director (Discipline) would be within jurisdiction to proceed further on the allegations. Therefore, non-mentioning of the exact clauses pertaining to "misconduct" does not in any manner vitiate the proceedings.

- 6.2 As regard the charge alleged, the Board noted that the complainant Department had recorded Statement of the Respondent on oath before DDIT (Inv.), Unit-(2), Kolkata on 28th May 2014 in connection with an enquiry conducted by Directorate of Income Tax (Investigation), Kolkata under section 131 (1A) of the Income Tax Act, 1961, wherein he, *inter-alia*, deposed as under:

Statement dated 28th May 2014:

Q.15 *All the above-mentioned persons have sold the shares of M/s BSR Finance and Construction Ltd. through brokers M/s Bikash Sureka and M/s M. Bhawani Wala and Co. and claimed LTCCG. Shri Bikash Sureka and Shri M. Bhawaniwala in their respective statement has stated that M/s BSR Finance and Construction Ltd. is a company controlled by you and in instance case you have instructed the brokers to sale and purchase the shares of M/s BSR Finance and Construction Ltd. on behalf of the persons mentioned in question No. 6 and on behalf of M/s Siddhi Commodeal Pvt. Ltd. Please offer your comments.*

Ans. *I agree with the statement given by Shri Bikash Sureka and Shri M. Bhawani Wala in r/s shares of M/s BSR Finance and Construction Ltd. and M/s Siddhi Commodeal Pvt. Ltd. I agree with their statement that I have introduced the clients and instructed them to sale and purchase the share of M/s BSR Finance and Construction Ltd. on behalf of the persons of Rajkot and on behalf of M/s Siddhi Commodeal Pvt. Ltd."*

- 6.3 The Board also noted that the complainant Department brought on record a copy of the Statement recorded before the Income Tax Department on

28th May 2014 in which it was said to have been stated that Shri Bikash Sureka and Shri M. Bhiwaniwala in their respective statement has stated that M/s BSR Finance and Construction Ltd. is a company controlled by the Respondent, however, the complainant Department has not provided copy of the same.

- 6.4 The Board further noted that the complainant Department brought on record that in the Assessment Order, the Assessing Officer has not made any addition in the income of the Respondent and no evidence has been brought on record by the complainant Department that after Assessment, any addition has been made in the income of the Respondent.
- 6.5 Thus, on a detailed perusal of the submissions and documents on record, the Board noted that the primary evidence which the complainant Department has brought on record for the charges alleged against the Respondent is the copy of his own Statement recorded on 28th May 2014 which had been subsequently retracted by the Respondent before the concerned official of the complainant Department. Beyond that, despite opportunities given to the complainant Department to substantiate the charges alleged against the Respondent, the complainant Department failed to bring on record any conclusive evidence to substantiate the charge alleged against the Respondent that he formed various shell companies for the purpose of providing accommodation entries in lieu of commission. In view of the same, the Board held the Respondent '**NOT GUILTY**' in respect of the charge alleged.

CONCLUSION:

7. 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/-

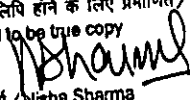
Dolly Chakrabarty, IAAS (Retd.)
Government Nominee

Sd/-

CA. Priti Savla
Member

Date: 07-05-2024

सही प्रतिलिपि होने के लिए प्रमाणित/
Certified to be true copy


निशा शर्मा / Nisha Sharma
वरिष्ठ कार्यकारी अधिकारी / Sr. Executive Officer
अनुशासनात्मक निदेशालय / Disciplinary Directorate
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