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

[PR-77/2018/DD/125/2018/BOD/623/2022]

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 Jagdish Kumar Jain

Prop. Sri Tulsi C/o Manisha Garments
S-106, Khetan Super Market, Birla Mandir Road

PatnaComplainant

Versus

CA. Rahul Kumar (M. No. 303823)

Manideepa Building, Flat No. 45, 4th Floor
4-Southern Avenue

KolkataRespondent

[PR-77/2018/DD/125/2018/BOD/623/2022]

MEMBERS PRESENT (IN PERSON):

CA. Rajendra Kumar P, Presiding Officer

Ms. Dolly Chakrabarty (IAAS, Retd.), Government Nominee

Date of hearing and passing of Order: 27th August 2024

1. The Board of Discipline vide its findings dated 30th May 2024 was of the view that CA. Rahul Kumar (M. No. 303823) 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.
2. An action under Section 21A (3) of the Chartered Accountants Act, 1949 was contemplated against CA. Rahul Kumar (M. No. 303823) and communication dated 19th August 2024 was addressed to him thereby granting him an opportunity of being heard on 27th August 2024, which was exercised by him by being present through video conferencing. He confirmed receipt of the findings of the Board and submitted his oral as well as written submissions.
3. Thus, upon consideration of the facts of the case, oral as well as written submissions, the consequent misconduct of CA. Rahul Kumar (M. No. 303823), the Board without commenting on the merits of the issues involved of the civil or criminal nature and looking into the limited extent of the Respondent's requirement of acting into the professional manner decided to '**Reprimand**' CA. Rahul Kumar (M. No. 303823).

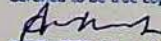
Sd/-

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

Sd/-

**Ms. Dolly Chakrabarty (IAAS, Retd.)
(Government Nominee)**

सही प्रतिलिपि को निम्न 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
आर्जीपुर्बा रोड, गिफ्ट सिटी, शाहदरा, दिल्ली-110032
ICAI Bhawan, Vidhas Nagar, Shahdara, Delhi-110032

Shri Jagdish Kumar Jain -Vs- CA. Rahul Kumar (M. No. 303823)

BOARD OF DISCIPLINE

(Constituted under section 21A of the Chartered Accountants Act 1949)

Findings under Rule 14 (9) of the Chartered Accountants (Procedure of investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.**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 Jagdish Kumar Jain**

Prop. Sri Tulsi C/o Manisha Garments,
S-106, Khetan Super Market, Birla Mandir Road,

Patna – 800004.....Complainant**Versus****CA. Rahul Kumar (M. No. 303823),**

Manideepa Building, Flat No. 45, 4th Floor,

4-Southern Avenue, Kolkata – 700026.....Respondent**Date of Final Hearing : 20th March 2024****Place of Final Hearing : ICAI Bhawan, Kasba, Kolkata****PARTIES PRESENT:**

Complainant: Mr. Ajit K. Jain, s/o Complainant along with Shri Rajesh Kumar, Advocate (in person)

Respondent: CA. Rahul Kumar along with CA. A. P. Singh, AR of the Respondent (through VC)

FINDINGS:**CHARGES ALLEGED:**

1. Respondent and CA. Amit Kumar Agarwal both partners in M/s Kumar Agrawal & Associates (FRN 019052C) (hereinafter referred to as 'Respondent's Firm') were involved in fraudulent use of TIN Number, User ID and Password of proprietorship firm M/s Sri Tulsi (hereinafter referred to 'Complainant's Firm') and has shown turnover of about Rs. 12-13 Crores in the name of complainant firm which led to manipulation in tax liability. Three FIRs were registered in the



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matter and the said matters are pending for investigation before the concerned investigating agency at Patna.

BRIEF OF PROCEEDINGS HELD:

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

Date of Hearing(s)	Status of hearings
4 th May 2023	Matter Part heard and adjourned
27 th July 2023	Part heard and adjourned
20 th March 2024	Matter heard and concluded

BRIEF SUBMISSIONS OF THE PARTIES: -

RESPONDENT

3. The Respondent in his written submissions inter-alia stated as under:

- 3.1 That the Prima Facie Opinion (PFO) formed by the Director (Discipline), while relying upon the FIR lodged by the Assistant Commissioner Commercial Taxes, Patna against the Respondent alleging tax evasion, it is evident that the Director (Discipline) has held the Respondent Guilty on the grounds that the Respondent allegedly played a role in enabling the actions of Rajesh Sah which caused considerable amount of tax evasion leading to huge losses to the Government Exchequer relied upon the FIR lodged by the Assistant Commissioner, Commercial Taxes; Patna against the Respondent alleging tax evasion without appreciating the submissions made by the Respondent besides failing to provide any concrete reasoning as to how the Respondent was involved in tax evasion and loss of government exchequer.
- 3.2 That the Director Discipline while giving the PFO failed to appreciate the facts and the submissions made by the Respondent. The Respondent refers to paragraph No. 6.2 (c) of the PFO, wherein the Respondent had submitted the relation shared by him and Mr. Mrityunjay Kumar @ Tinku Kumar. For ease of reference, the Respondent refers to the relevant portion of the said paragraph as under: -

"Mr. Mrityunjay Kumar @ Tinku Kumar who works primarily in the field of Sales Tax and admittedly was the accountant of the Complainant and his firm M/s. Sri Tulsi though has no relationship with Respondent Firm or any of its partners, would often visit their office to harvest sales tax matters for himself and if there was any client of Respondent Firm who needed any services for Sales Tax was referred to Mr. Mrityunjay Kumar as friendly gesture who would then independently transact his business with the said person. Mr. Rajesh Sah from Kolkata called the Respondent on being referred by a common acquaintance in Kolkata seeking help with a Sales Tax registration. Since Sales Tax was not Respondent's field of work, Respondent shared the contact number of

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Mr. Mrityunjay Kumar with Rajesh Sah. Thereafter, the said Mr. Rajesh Sah and Mr. Mrityunjay Kumar transacted between themselves all their business independent of Respondent Firm and any of its partners."

- 3.3 That the Respondent was never involved in Sales Tax registration and filing and dealt solely with matters pertaining to Income Tax and Company Law on behalf of clients. This fact was stated to the Director (Discipline) by way of the Written Statement dated 18th June 2018. Mr. Mrityunjay Kumar was an acquaintance and was not involved in any manner with the partnership firm of the Respondent. Since Mr. Mrityunjay Kumar, who operated independently of the Respondent's firm and had his own set of clientele, dealt with filing and registration of Sale Tax, the Respondent on a strictly informal and friendly basis, occasionally referred to Mr. Mrityunjay Kumar certain acquaintances of the Respondent who required Sales Tax support in the form of registration and filing.
- 3.4 That the complainant, despite claiming that Respondent was involved with Mr. Mrityunjay Kumar in duping the complainant by misusing his credentials, has failed to provide any substantive evidence suggesting the same. Only evidence of Respondent's involvement with Mr. Mrityunjay Kumar provided by the complainant and relied upon by the Director (Discipline) are the FIRs and counter FIRs lodged by the parties involved in the bogus filing of sales tax return case against one another. Out of these FIRs, the most prominent piece of evidence relied upon by the Director (Discipline) is the FIR bearing No. 233/2017 lodged by Shri Sanjay Kumar, Assistant Commissioner, Commercial Taxes at Patna, against Mr. Mrityunjay Kumar and others including the Respondent, wherein the complainant had alleged the involvement of the Respondent.
- 3.5 That the Respondent further submits that complainant has alleged that Respondent along with his partner CA. Amit Kumar Agarwal were involved in fraudulent use of TIN No., User ID and Password of the proprietorship firm M/s Sri Tulsi and has shown about 12-13 crores in the name of complainant's firm. However, it is submitted that despite making such baseless allegation, the complainant has not been able to provide any substantive evidence with respect to the same.
- 3.6 Respondent submits that even though the FIRs and counter FIRs were lodged in 2017, the investigation by the Police is still pending in all of them and no charge sheet has been filed by the Police till date, a fact admitted by the Director (Discipline) himself in Para 7.2 of the PFO. Despite it, the Director (Discipline) relied upon the FIRs, especially FIR bearing No. 233/2017, and hold the Respondent Guilty of Misconduct.
- 3.7 Respondent further submits that the Hon'ble Supreme Court in the matter of Pandurang Chandrakant Mhatre v. State of Maharashtra [(2009) 10 SCC 773], under Para 29 had observed as under: -

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"29. It is fairly well settled that First Information Report is not a substantive piece of evidence and it can be used only to discredit the testimony of the maker thereof and it cannot be utilized for contradicting or discrediting the testimony of other witnesses."

- 3.8 The Respondent furthermore submits that the Hon'ble Supreme Court in the case of Roop Singh Negi vs. Punjab National Bank and Ors. (2009) 2 SCC 570, under Para No. 10 had observed the following: -

"10. Indisputably, a departmental proceeding is a quasi-judicial proceeding. The Enquiry Officer performs a quasi-judicial function. The charges levelled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police."

Thus, the Director (Discipline) while deciding upon the Guilt of the Respondent, cannot merely rely on the FIR as evidence. FIR is just a record of the allegations against a person and cannot be treated as substantive piece of evidence. Therefore, the reliance of the Director (Discipline) to decide upon the involvement and thereafter Guilt of the Respondent is grossly misplaced.

- 3.9 The Respondent also submits that the Director (Discipline) failed to understand the relation between the Respondent and Mr. Mrityunjay Kumar. He submits that the Respondent never colluded with Mr. Mrityunjay Kumar to defraud either the complainant or the Sales Tax Department in any manner whatsoever. The only role played by Respondent in the whole matter which culminated to the filing of this false complaint against the Respondent by the complainant, was the introduction of Mr. Rajesh Sah, an acquaintance of the Respondent to Mr. Mrityunjay Kumar being another acquaintance of the Respondent.
- 3.10 Besides above, Respondent submits that it is admitted that the email sent by Mr. Mrityunjay Kumar was received by the Respondent, however the averment of the Director (Discipline) and the complainant that the same indicates collusion between Respondent and Mr. Mrityunjay Kumar is wrong and misplaced. The Respondent reiterates that he had only forwarded the email containing the credentials sent by Mr. Mrityunjay Kumar to Mr. Rajesh Sah as Mr. Mrityunjay Kumar had requested him to forward the same. The Respondent forwarded the said email from Mr. Mrityunjay Kumar not with any ill intention as alleged by the complainant,



but rather to help his acquaintances Mr. Mrityunjay Kumar and Mr. Rajesh Sah. In fact, the email had been forwarded by the Respondent to Rajesh Sah, as it had been received by him. The Respondent did not play any role in duping the complainant in any manner and was not even aware of the existence of the complaint before the filing of the FIR by the complainant and his son. Barring the FIRs, the complainant has not been able to provide any substantive evidence showing the involvement of the Respondent. The Respondent played no role in filing of sales tax returns on behalf of either Mr. Rajesh Sah or the complainant.

- 3.11 Additionally, Respondent submits that he puts the complainant to strict proof to show how the Respondent had attempted to misuse the credentials of the complainant. Despite alleging that the Respondent has misused the credentials, the complainant has neither been able to explain any motive or intention of the Respondent that will compel the Respondent to commit such a crime. The Respondent did not make any illegitimate and illegal earnings from the whole scenario involving Mr. Mrityunjay Kumar, the complainant and Mr. Rajesh Sah. Neither the complainant has been able to bring on record any documentation or substantive evidence showing the involvement of the Respondent in duping the complainant. A mere and harmless error on the part of the Respondent, in the form of sharing an e-mail, has been blown out of proportion by the complainant to wrongly frame the Respondent.

COMPLAINANT

4. The Complainant in his Rejoinder inter-alia stated as under:

- 4.1 That after going through the report and discussions made thereon during enquiry, it came within the knowledge of the complainant that his Part time Accountant namely Mrityunjay Kumar @Tinku Kumar fraudulently supplied the TIN/User ID and Password of the complainant's firm M/S Sri Tulsi, which was closed on 31.05.2015 situated at G-93 ground floor, Khaitan Super Market, to the Respondent on his Email ID: modigohul-11@gmail.com through his ID i.e. mritunjay37@yahoo.com and the Respondent send the complainant's VIT, TIN and Password after getting illegal ratification to Rajesh Sah of Kolkata and on that basis with the connivance of Rakesh Jain P/o Padmo Logistics filed Return of more than 14 Crores for supply of stone chips to M/S Gamon India.
- 4.2 That after knowing the aforesaid fact complainant filed an F.I.R. before Pirbahore P.S., Patna bearing Pirbahore P.S. Case No. 281 of 2017 dated 01.06.2017 against 3 accused persons including the Respondent.
- 4.3 That it will not be out of place to mention that the opposite party himself admitted in a letter sent by him before Deputy Commissioner, North Circle, Patna vide letter dated 22.05.2017 that Respondent contacted Mr. Mrityunjay Kumar for the VAT, TIN, User ID and Password of M/S Sri Tulsi and other firm and got the same from Mrityunjay which was fraudulently

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used to file forged and fraudulent return of Padmo logistics. Further, the Respondent in his letter dated 02.06.2017 sent to city SP Patna also admitted that he got VAT, TIN/ User ID and Password from Mrityunjay Kumar which was forwarded to Rajesh Sah, and he got a sum of Rs. 20000/- from Rajesh Sah.

- 4.4 That from the facts and circumstances, it is clear that Respondent being a CA. Professional gained knowingly and fraudulent forwarded VAT, TIN, User ID and Password of the complainant's closed shop namely M/S Sri Tulsi on the basis of which the fraudulent transaction was occurred of more than 14 Crores by causing loss to the Government revenue by fraudulently implicating to the petitioner and other persons for his wrongful gain for which the Respondent is solely responsible of his misconduct.
- 4.5 That the complainant never executed sale deed in favour of anyone which is apparently from the executant's signature as it was signed as Jagdish Jain in place of Jagdish Kumar Jain which is usual signature of the complainant.

OBSERVATIONS OF THE BOARD:

5. The Board noted that Mr. Mrityunjay Kumar was an Accountant of the complainant and his firm M/s Sri Tulsi for several years. The Board also noticed that after the receipt of a complaint that some professionals are indulged in tax evasion whereby causing loss of revenue to the Bihar State, a joint team of North and Western circle of Central Investigation Bureau, Commercial Tax Department inspected two firms namely M/s Manisha Enterprise and M/s Sri Tulsi and found discrepancies in their financial statements for the FY 2015-2016 and 2016-2017 and Shri Sanjay Kumar, Assistant Commissioner, Commercial Taxes, Patna in FIR No. 233/2017 dated 18th May 2017, named Respondent, complainant Mr. Mrityunjay Kumar, complainant's firm, Manisha Enterprises, and others as accused. Relevant Para in the said FIR, is reproduced herein: -

*"When the inspecting team reached at the address of M/s. Sri Tulsi and Manisha Enterprises (G-93), Khetan Super Market, Patna, they found a board of some jewellery shop, on enquiry they came to know that proprietor used to sit at shop no. S-103, M/s. Manisha Enterprises where Jagdish Kumar Jain (Complainant herein) and Sri Rajesh Kumar Jain both father and son were present and they informed the business of readymade garments in shop G-93 was closed. It was also informed that neither they are doing business of stone chips, nor they sold to M/s. Padma Logistic in the aforesaid period. It is also informed that Sri Mrityunjay Kumar @ Tinku Kumar (accountant) used to keep their ID and password, the said accountant used to maintain their account book and deposit the statement of taxes of their firms. Accountant Mrityunjay Kumar informed that he supplied ID, Password and Adhar Card of M/s Sri Tulsi to **CA. Rahul Modi (Respondent herein)** and partner Amit Kumar Agrawal who are attached with M/s. Kumar and Agrawal Associates, and they may file return of 2015-16 with wrong intention."*



6. The Board further noted that complainant alleged that Respondent along with his partner fraudulently used TIN number, User ID and Password of complainant's firm and did manipulation in tax liability and costed Crores of rupees to Government Exchequer. Complainant also alleged that Respondent in connivance with Mr Rajesh Sah by using complainant firm TIN No. and password filed return of more than 14 Crores for supply of stone chips. The Board further noted that Mr. Mrityunjay Kumar was known to Respondent, as Respondent knows nothing about the services for Sales Tax, hence, Respondent refers the clients to the Mr. Mrityunjay Kumar thereby Mr. Mrityunjay Kumar transact his business with clients. Mr Rajesh Sah contacted Respondent for sales tax work, Respondent referred him to Mr. Mrityunjay Kumar, as stated by the Respondent. Thereafter, Mr. Mrityunjay Kumar and Mr Rajesh Sah transacted between themselves. Mr. Mrityunjay Kumar sent email dated 25th May 2016 containing Sales tax details of complainant firm viz. TIN No and password to Respondent asking him to forward the said email to Mr. Rajesh Sah, thereby Respondent without conducting any enquiry/scrutiny regarding instant email, forwarded it to Mr. Rajesh Sah, a totally unknown person. Rajesh Sah filed the return with wrong figures thus causing loss to the revenue of the government exchequer.
7. Besides above, the Board noted that Respondent claims that complainant executed sale deed and parted with his TIN No and password. The Board observed that there is no proof on record that such execution was done by the complainant. Mr. Mrityunjay Kumar has filed returns till 2014-2015 but for the year 2015-2016, the return was filed by the Respondent firm. It appears that the Respondent is indirectly engaged with the help of Mr. Mrityunjay Kumar and Mr Rajesh Sah in the filing of sales tax returns and other matters relating to consumption Taxes. Hence the role of the Respondent in filing of false returns on behalf of closed firm, i.e., M/s Sri Tulsi cannot be precluded. When the firm was closed before April 2015 then filing for the FY 2015-2016 is of no use and therefore, filing for this year clearly shows Respondent is wrong at this stage. Mr. Mrityunjay Kumar in his online complaint addressed to Patna Police for registration of FIR for cyber-crime committed by Respondent stated that Respondent requested the details of the complainant firm for checking and the fraud was committed by the Respondent and Mr. Rajesh Sah, which raises suspicion on the conduct of the Respondent, as a Professional.
8. The Board observed that the complainant lodged FIR No. 281/2017 dated 1st June 2017 in PS Pirabhore against Mr. Mrityunjay Kumar, Respondent and others. Additionally, complainant's son lodged FIR No. 280/2017 dated 1st June 2017 in PS Pirabhore against Mr. Mrityunjay Kumar, whereas FIR No. 233/2017 dated 18th May 2017 is lodged by Shri Sanjay Kumar, Assistant Commissioner, Commercial Taxes Patna. These FIR indicates that the Respondent is involved in the alleged offence and his negligence has costed the Government exchequer.
9. Pursuant to noting as above and perusing the records available besides hearing the parties; the Board upholds the views 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

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with section 22 of the said Act. At this stage, the Board also feels it appropriate that the Respondent be advised that he should have taken due care and due diligence and should have used the professional scepticism, which he failed to do so in the instant matter as he has submitted that he was in his initial years of practice and not dealing with sale tax related work. The Board also expressed the views that since the society places high trust, faith and reliance on the Chartered Accountants as a Professional, and because the complainant has suffered due to the careless attitude of the Respondent, therefore, the Board feels that the Respondent should have been more careful in the matter.

CONCLUSION:

10. 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/-

Dolly Chakrabarty, IAAS (Retd.)
Government Nominee

Sd/-

CA. Priti Savla
Member

Date: 30-05-2024

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चरण सिंह/Charan Singh

कार्यकारी अधिकारी/Executive Officer

अनुशासनात्मक निदेशालय/Disciplinary Directorate

भारतीय सनदी लेखाकार संस्थान

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