

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "SMC", HYDERABAD

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 118/Hyd/2023  
(निर्धारण वर्ष / Assessment Year: 2014-15)

Venkata Ramana Anupa, Kurnool [PAN No. ACXPA3372N]	Vs. Income Tax Officer, Ward-2, Kurnool
अपीलार्थी / Appellant	प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri Venkata Ramana Anupa  
राजस्व द्वारा/Revenue by: Shri AP Babu, DR

सुनवाई की तारीख/Date of hearing: 15/05/2023  
घोषणा की तारीख/Pronouncement on: 17/05/2023

आदेश / ORDER

Aggrieved by the order dated 26/12/2022 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Venkata Ramana Anupa ("the assessee") for the assessment year 2014-15, assessee preferred this appeal.

2. Whether or not there is income in the hands of the assessee is the question that is involved in this appeal. According to the assessee, there was a fraud played by his partners with the connivance of Chartered Accountant in furnishing the return of income and other documents by making use of PAN of the assessee and also the same Chartered Accountant appropriated the refund that was issued by the department.

3. Assessee also pleaded before the learned CIT(A) that there was no real income in his hands and whatever the return of income that were furnished by the Chartered Accountant was false and without his knowledge. Both the authorities did not agree with the assessee and according to them, the assessee is putting up his case of fraudulent filing of returns of income by the Chartered Accountant and various representations made by him before various forums, but there is nothing to dispute the addition that is made.

4. Assessee himself represented his case before me and he filed various documents to substantiate his claim that he has no income at all in the relevant year due to his illness and as a matter of fact, he did not conduct any business what-so-ever in such year. According to him, he is an ex-service man retired from Navy in the year 2001. He did hot chips business for some years and subsequently, due to heart related ailments, he quit from the business. He got a license to do liquor business at Dhone in the year 2012, but because of his severe heart problem, he did not continue the same. According to him, he did not file returns of income for the assessment year 2014-15 also but making use of his PAN number, bank details, license etc., his partners and the Chartered Accountant fraudulently uploaded the ITR on the basis of fake documents.

5. Assessee further submitted that because of the fraud played by the Chartered Accountant, one Mr. Mekala Venkata Swamy Reddy in uploading the ITR basing on fake and fabricated documents without his consent at the instigation of one Mr. Abbineni Srinivasulu Goud, the assessee filed a complaint before the Institute of Chartered Accountants of India (ICAI), New Delhi and in the disciplinary proceedings, it was concluded that the said Chartered Accountant filed the returns of income without the consent of the assessee. Assessee also produced the proceedings of the ICAI. By order dated 06/01/2020, ICAI found that the Chartered Accountant with the connivance of one Mr. Abbineni Srinivasulu

Goud, advertantly prepared and filed ITRs of assessee in this case without his knowledge on the basis of fake supporting documents. This order clearly reads that for such an act of mis-conduct the Chartered Accountant was found guilty. The assessee further filed a copy of charge sheet based on his complaint against Mr. Abbineni Srinivasulu Goud and others included the Chartered Accountant before the Judicial First Class Magistrate, Dhone for the offences punishable under section 418, 419, 420, 468, 471 and 477A IPC. This document establishes that the investigation conducted by the police also shows that there was a fraud played against the assessee by the accused therein by making using of the bank accounts, PAN etc.

6. In all these circumstances, he prayed that since there is no income in his hands he cannot be fastened with the liability to pay any tax.

7. Per contra, learned DR supported the orders of the authorities below and submitted that the assessee has to pay the taxes and he may collect the same against the perpetrators of the fraud and he cannot have any relief in these proceedings.

8. I have gone through the record in the light of the submissions made on either side. In the paper book, the assessee furnished the order dated 29/07/2016 in Criminal Petition No. 10561 of 2016 on the file of the Hon'ble High Court of Judicature at Hyderabad (for the State of Telangana and the State of Andhra Pradesh), wherein Mr. Abbineni Srinivasulu Goud and others were accused/petitions sought anticipatory bail. The order clearly reads that they have admitted therein that they happen to be the partners of the assessee herein in the liquor business. There is no denial of the fact that one Mr. Mekala Venkata Swamy Reddy was the Chartered Accountant, who uploaded the ITRs of the assessee for the assessment year 2014-15. The finding by the Board of Discipline of ICAI is to the effect that the said Chartered Accountant, with the connivance of the partners

of the assessee, prepared fake documents to support the ITR which was uploaded without the knowledge of the assessee. It prima facie creates any doubt as to whether there is any income in the hands of the assessee for this year or not? ICAI is a professional body competent to deal with the complaints against the Chartered Accountants, and the proceedings of the Disciplinary Board thereof carry their own credibility and cannot be simply brushed aside. Due regard has to be given to the findings of such professional Body. The said findings lends any amount of support to the contention of the assessee.

9. Be that as it may, criminal case is pending against the alleged perpetrators of the fraud and the findings of the criminal court would clinch the issue with this aspect. Fraud vitiates everything. In these circumstances, I am of the considered opinion that it would not be in the interest of justice to direct the assessee to pay the taxes resulted on the fraud played against him and then, to collect the same from the perpetrators of the fraud. In the fitness of things, I deem it just and proper to set aside the issue to the file of the learned Assessing Officer to take a view basing on the outcome of the criminal case. I hold and direct so.

10. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on this the 17<sup>th</sup> day of May, 2023.

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

Hyderabad,  
Dated: 17/05/2023

TNMM

Copy forwarded to:

1. Venkata Ramana Anupa, 80-11-63A, Krishna Nagar, Kurnool.
2. Income Tax Officer, Ward-2, Kurnool.
3. DR, ITAT, Hyderabad.
4. GUARD FILE.

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD