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IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE

Before Shri George George K, JM & Ms.Padmavathy S, AM

ITA No.1379/Bang/2014 : Asst.Year 2005-2006
ITA No.1380/Bang/2014 : Asst.Year 2006-2007
ITA No.1381/Bang/2014 : Asst.Year 2007-2008

Sri.Rajkumar C (HUF) No.259/B, 7th Cross HSR Layout, Sector – 1 Bangalore 560 102 **PAN : AAMHR4074B.**	v.	The Deputy Commissioner of Income-tax, Circle 7(1) Bellary.
(Appellant)		(Respondent)

Appellant by : Sri.Deepesh Waghale, CA
Respondent by : Sri.Gudimella V..P. Pavan Kumar, JCIT-DR

Date of Hearing : 20.10.2022		**Date of Pronouncement : 31.10.2022**

O R D E R

Per George George K, JM :

These appeals were originally disposed off by the ITAT vide its order dated 27.04.2016. On further appeal by the Revenue u/s 260A of the I.T.Act, the Hon'ble High Court restored the cases to the ITAT. The relevant finding of the Hon'ble High Court reads as follows:-

> *"9. From perusal of the order passed by the tribunal, it is evident that the tribunal has set aside the order of assessment mainly on the ground that the Assessing Authority has not recorded independent findings to revoke re-assessment proceeding and the order of re-assessment has been passed on the directions of the Commissioner of Income Tax (Appeals). The tribunal has not considered the provisions of Explanation 2(b) to Section 153 of the Act, by which the Assessing Authority is empowered to include any income excluded from total income of a person and is treated to be income of another person, then such an assessment of the income on such other person shall be deemed to be paid in consequence of or to give effect to any finding or*

> *direction contained in the said order. Therefore, since the order of assessment has been passed by the tribunal without taking note of Section 150 read with Section 153 as well as explanation 2 to Section 153 of the Act, we answer the additional substantial question of law in favour of the revenue and against the assessee. . Therefore, we do not propose to deal with the rival contentions. In the result, the order passed by the tribunal dated 27.04.2016 is quashed and the tribunal is directed to decide the appeal by taking into account the provisions of Section 150 and Section 153 of the Act after affording an opportunity of hearing to the parties."*

2. Pursuant to the Hon'ble High Court judgment, the matter was heard on 20.10.2022.

3. The brief facts in relation to the above case are as follows:

A search and seizure operations were conducted in the case of one Shri K.J.Purushotham Reddy on 26/8/2008. During the course of search operations, the residential premises of Shri C.Rajkumar (kartha of assessee), were also covered. It was stated that as a result of search and seizure operations, certain documents belonging to the assessee were found and seized by the Investigation Wing of the Department. During the course of search operations, it was stated by Shri Rajkumar who is the kartha of the present assessee i.e. Rajkumar C, HUF that regular returns of income were being filed in the individual capacity and no returns were filed in the status of 'Rajkumar C, HUF', assessee herein. It is stated that Shri Rajkumar appeared before the Investigation Wing of the Department and gave a statement on 26/08/2008 and also filed a letter dated 24/12/2008 before the ADIT, Investigation Wing that the income earned from real estate activities belong to the HUF. However, no

returns were filed. While matter stood thus, assessments were completed in the hands of Shri Rajkumar, in his individual capacity u/s 143(3) read with sec.153C of the of the Income-tax Act, 1961 on 28/2/2010 for the assessment years 2005-06 to 2007-08. In the said assessments, the income earned from the activity of real estate, and gains arising out of sale of lands etc. was brought to tax. However, on appeal the CIT(A) accepted the contention of the assessee that the income belonged to HUF and not to individual. The CIT(A), however, directed the AO initiate assessment proceedings to tax this income in the hands of Rajkumar C, HUF The relevant paragraph of the order of the CIT(A) for the three years are as under:

> *"**2005-06:***
> *In view of the fact that the land belonged to their HUF which has come to them by a registered partition deed dated 05.08.78, the income arising on the sale of the property of 4 acres situated in Sy No.80 (2 acres) and in Sy No.8 1 (2 acres) sold to M/s Krystal Projects India Pvt Ltd amounting to Rs.1,44,75,000/- shall be assessed in the hands of the HUF and the of this income in the hands of individual is held to be not correct. A.O. is directed to proceed against their HUF to assess this income and if the A.O. has no jurisdiction over the HUF, he shall request the AO. having jurisdiction over the HUF of Sri C Rajkumar to take appropriate action to assess income arising on the sale of the property in the hands of the HUF.*
>
> ***2006-07**:*
> *Apparently, the facts of A.Y. 2005-06 as narrated in para 3.3 & 3.4. of A.Y. 2005-06 in this Order are clearly applicable and since the nucleus of the funds have come from , the HUF and in particular from the sale of Kasavanahalli lands and other assets and income of the HUF, the above incomes should have been assessed in the hands of the appellant's HUF and not in his individual capacity. The income earned in the individual capacity of Rs.44,50,000/- has been separately admitted by revising their returns and hence, it is held that A.O. shall take steps to assess the above income of Rs.1,60,68,940/- only in the hands of their HUF as directed in AY 2005-06.*

> ***2007-08:***
> *'Apparently, the facts of A.Y. 2005-06 as narrated in para 3.3. of A.Y 2005-06 in this Order are clearly applicable and since the nucleus of the funds have come from the HUF and in particular from the sale of Kasavanahalli lands and other assets and income of the HUE, the above incomes should have been assessed in the hands of the appellant's HUF and not in his individual capacity. The income earned in the individual capacity of Rs.54,72,500/- has been separately admitted by revising their returns and hence, it is held that A.O. shall take steps to assess the balance income of RS.2,40,25,150 (Rs.2,37,96,270 + Rs.2,28,880) only in the hands of their HUF as directed in 2005-06.*

4. Consequent to the above directions, notice u/s 148 of the I.T.Act was issued to the assessee, namely, the HUF and reassessments were completed. The view taken by the A.O. in assessing the income in the hands of the HUF for assessment years 2005-2006 to 2007-2008 was confirmed by the CIT(A). On further appeal by the assessee, the Tribunal decided the issue of validity of reassessment in favour of the assessee. As mentioned earlier, the Tribunal order was set aside by the Hon'ble High Court.

5. The learned AR submitted that the Assessing Officer is required to pass order u/s 153C of the I.T.Act and not u/s 144 r.w.s. 147 of the I.T.Act. It was further contended that the Assessing Officer should have given specific opportunity u/s 153(3) Explanation 3 to the assessee, which was not provided to the assessee. Lastly, it was contended that the HUF has been disrupted much prior to the search being conducted in the premises of Sri. K.J.Purushotham Reddy on 26.08.2008 and the HUF being not suffered tax in the past assessment years, cannot be deemed to continue to be HUF. Therefore, it was contended that the assessment cannot be

done in those HUF, which has disrupted before the impugned order is passed. In this context, the learned AR relied on the following judicial pronouncements:-

(i) CIT v. M/s.Lakkanna & Sons 57/1994 (Kar. HC)
(ii) K Ramesh Reddy HUF v. ACIT ITA No.1057/Bang/ 2017

6. The learned Departmental Representative submitted that there was specific directions in the case of individual by the CIT(A) to assess the income in the hands of the HUF. Therefore, the A.O. has correctly initiated reassessment proceedings by issuance of notice u/s 148 of the I.T.Act. It was contended by the learned DR that time limit for issuance of notice u/s 148 of the I.T.Act is not barred by limitation in view of the provisions of section 150(1) of the I.T.Act.

7. We have heard rival submissions and perused the material on record. Section 150 of the I.T.Act provides for extended time limit when an assessment / reassessment is done in pursuance / consequent to giving effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of an appeal, reference or revision. Sub-section (2) of 150 of the I.T.Act states that provisions of sub-section (1) shall not apply when the assessment of the concerned person has already become time barred as on the date of passing of appellate order (wherein the directions are contained). In the instant case, admittedly, when the directions were issued by the CIT(A) in the case of the individual to assess the income in the hands of the HUF, the assessments in the hands of the HUF had not become

time barred. The directions of the CIT(A) is very clear and specific. The CIT(A) directed the A.O. to assess the income in the hands of the HUF, instead of the individual (while allowing the appeal in the case of the individual). Therefore, taking into account the provisions of section 150(1) of the I.T.Act, we hold that the reassessment completed is justified and valid in law.

8. However, we notice that the HUF was partitioned on 30.06.2002. Admittedly, the said partition deed was forming part of the seized document during the course of search. The Assessing Officer, who passed the original order u/s 153C of the I.T.Act in the individual case had accepted the partition, which was part of seized material. The assessment order u/s 144 r.w.s. 147 of the I.T.Act in the case of HUF was completed on 25.03.2013. The Hon'ble jurisdictional High Court in the case of CIT v. M/s.Lakkanna & Sons in IT Reference Case No.57/1994 (judgment dated 26.05.2005) had held that when HUF was not assessed in that status prior to the relevant assessment year, the Assessing Officer has erred in assessing the assessee as an HUF after the disruption of the HUF. It was held by the Hon'ble Court that fiction that a joint family shall be deemed to continue, enunciated in section 171(1) of the I.T.Act is only for limited purpose of roping in cases of joint families which had hitherto been assessed. It was further observed by the Hon'ble Court that it is not possible to extend that fiction beyond the field legitimately intended by the statute. It was held by the Hon'ble Court that the expression "hitherto assessed" occurring in section 171 of the

I.T.Act is significant and only HUF which had suffered in the past would deem to continue to be HUF till an order of partition u/s 171(1) is recorded. Similar view has been held by the Hon'ble Andhra Pradesh High Court in the case of Addl.CIT v. P.Durgamma reported in 166 ITR 776 and the order of Bangalore Bench of the Tribunal in the case of Sri.K.Ramesh Reddy HUF, in ITA No.1057/Bang/2017 (order dated 20.09.2021). The relevant finding of the Tribunal in case of Sri.K.Ramesh Reddy HUF (supra), which had followed the judgment of the Hon'ble jurisdictional High Court in the case of CIT v. M/s.Lakkanna & Sons (supra), reads as follows:-

> *"17. On the question whether the provisions of Sec.171 of the Act would support the assessment in the hands of the HUF. The procedure prescribed under Section 171 would apply to a Hindu family hitherto assessed as undivided. Section 171(1) reads as under :*
>
>> Section 171(1): A Hindu family hitherto assessed as undivided shall be deemed for the purposes of this Act to continue to be a Hindu undivided family except where and insofar as a finding of partition has been given under this section in respect of the Hindu undivided family.
>
> *The words 'hitherto assessed as undivided' are very important while considering the section. If the family has already been assessed as a Hindu family, then, under the above provision, it shall be deemed to continue to be undivided family. In the instant case, prior to the assessment year 2002-03, the assessee-family was not assessed as a HUF. Hence, on 30.11.2006, when the assessment was made, the HUF was not in existence. In such a case, the procedure prescribed under Section 171 will have no application as the assessee was not hitherto assessed as HUF and so, the fiction created under that section to deem it as HUF will not arise. There is no other provision to assess the HUF after disruption. Apart from Section 171 of the Income-tax Act, 1961, and perhaps to a certain extent, Sub-section (4) of Section 170 of the Income-tax Act, 1961, there is no machinery to assess a Hindu undivided family which had disrupted and the said machinery provides only in the case of 'families hitherto assessed as undivided', it is difficult to find any machinery to assess a Hindu undivided family which had never been assessed before, after it had disrupted. A Hindu undivided family is a taxable entity and is*

> *a juristic person. It can only be proceeded against in the manner provided in the Act or under the general principles of the Hindu law after the disruption of the family. The general law does not provide for any machinery to determine the liability of the individual members of the undivided family before disruption. Unfortunately, the machinery provisions of Section 171 and the corresponding provisions in Section 25A are limited in scope to tax only the Hindu undivided family, which has been 'hitherto assessed'. Undoubtedly, after Hindu undivided family had disrupted and in the view of the fact that assessment were completed after the HUF got disrupted, it must be held, therefore, that the proceedings were irregular and without jurisdiction. The following judicial pronouncements lays down the view as stated above: Roshan Di Hatti v. CIT [1968] 68 ITR 177 (SC), Rameswar Sirkar v. ITO [1973] 88 ITR 374 (Cal.), Shyam Sundar Bajaj v. ITO [1973] 89 ITR 317 (Cal.). Thus, we are of the view that the assessment made on 30.11.2006 on the assessee as HUF is not valid as on that date, the HUF was not in existence. Thus, we cancel the assessment made on the assessee in the status of HUF."*

9. In the instant case, the HUF was disrupted / partitioned as on the date of assessment (Assessment order in case of HUF was completed on 25.03.2013) and the HUF having not been assessed in the past, the assessment order in the status of HUF is invalid, going by the dictum laid down by the judicial pronouncements cited supra. Therefore, the assessment order dated 25.03.2013 in status of HUF is hereby quashed. It is ordered accordingly.

10. In the result, the appeals filed by the assessee are partly allowed.

Order pronounced on this 31st day of October, 2022.

Sd/-	**Sd/-**
(Padmavathy S)	**(George George K)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Bangalore; Dated : 31st October, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-III, Bangalore.
4. The CIT-III, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore