IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B. R. BASKARAN, ACCOUNTANT MEMBER

ITA No.1057/Bang/2017
Assessment Year : 2002-03

Shri. K. Ramesh Reddy, HUF, No.144, 10th Cross, Indiranagar I Stage, Bengaluru – 560 038. **PAN : AAGHK 4712 F**	Vs.	The Assistant Commissioner of Income Tax, Circle -1(2)(2), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri. V. Srinivasan, Advocate
Respondent by	:	Shri. Sankar Ganesh, JCIT(DR)(ITAT), Bengaluru

Date of hearing	:	08.09.2021
Date of Pronouncement	:	20.09.2021

O R D E R

Per N. V. Vasudevan, Vice President:

This is an appeal by the assessee against the Order dated 24.03.2017 of CIT(A)-4, Bengaluru, relating to Assessment Year 2002-03.

2. The assessee Sri. K.Ramesh Reddy(HUF) did not file any return of income for AY 2002-03. K.Ramesh (Individual) filed return of income for AY 2002-03. In the case of Sri K Ramesh Reddy(Indl) an assessment u/s 143(3) of the IT Act was completed on 31.3.2005. During the course of assessment proceedings in the case of K.Ramesh Reddy(Individual), the assessee took stand stating that all the income(other than the rental income derived by him from Renuka Commercial complex which is his separate property) that arose during the previous year relevant to assessment year 2002-03 belonged to his erstwhile joint family vide page 2 of written explanation dated 25.2.2005

addressed to the then AO. However the assessee has not filed the Return of income in the status of HUF for the assessment year 2002-03. Since the income chargeable to tax in the hands of the HUF has escaped assessment, the proceeding u/s 147 of the IT Act were initiated in the status of HUF by recording the reasons. Notice u/s 148 of the IT Act was issued by the then AO, Bangalore on 15.04.2005. However the assessee did not file the Return of income in the status of HUF in response to the said notice.

3. By an order dated 30.11.2006, passed u/s.143(3) read with Sec.147 of the Act, wherein the AO recorded the fact that in a reply dated 18.2.2005, K.Ramesh Reddy (Individual) has stated that except income derived from Renuka complex, the rest of the properties belong to his HUF. The portionof the reply reads as under:

> " ….All the income which is accruing to me or received by me are from out of the properties which are ancestral and they do not constitute my separate properties. Therefore, income except rent derived from a complex called Renuka complex, which was received by me by way of gift/settlement from my mother and on that count my separate property assessable in the status of (individual) are assessable in the hands of my joint family and not in my hands in "individual status".

4. After taking note of the above, statement, the AO observed as follows:

> "Keeping in view of the above statement and circumstances of the case, **a protective assessment is made in the status of HUF** to protect the interest of revenue."

5. Thereafter the AO completed the Assessment and computed total income as under:

"Income from house property

Flats at KrishnaNagar Apartments as discussed	Rs. 2,30,385/-

Income from Business

ij Profit on sale of 12 flats as discussed	- Rs.49,21,884/-	
ii] Profit on sale of sites as discussed	- Rs.41,50,000/-	
iii] Profit on sale of sites 44 to 37 survey no.39/2, as discussed	- Rs. 2,90,000/-	Rs.93,61,884/-
Income from long term capital gains		
Long term capital gains as discussed above		Rs. 17,11,203/-
	Total assessed income	Rs.1.13,03,472"

6. Aggrieved by the aforesaid order of the AO, the assessee preferred appeal before CIT(A) and the date of institution of appeal before CIT(A) was 17.1.2007. However, the impugned order was passed by the CIT(A) only on 24.3.2017.

7. During pendency of appeal before CIT(A) certain development took place in the case of assessment of K.Ramesh (individual). We have already seen that for AY 2002-03, K.Ramesh (Individual) filed return of income and K.Ramesh (HUF) did not file any return of income. In the assessment of K.Ramesh (Individual), the income that is sought to be taxed in the hands of the K.Ramesh (HUF) was taxed in the hands of K.Ramesh (individual). Against such Assessment the Assessee filed appeal contending that,except the income from Renuka Complex, all other income are assessable in the hands of K.Ramesh (HUF) and not in the status of K.Ramesh (Individual). Such plea of the Assessee was not accepted by the First appellate Authority and by the Tribunal, which held that income from property were assessable in the hands of K.Ramesh (individual). On appeal against the order of the Tribunal, **the**

Hon'ble High Court by their orders dated 12/12/2014 and 08/12/2014 held that the properties, which the department contended as the separate properties and income therefrom assessable in "Individual" status were ancestral in nature and therefore, the income therefrom were not assessable in the hands of the in the status, of "Individual" and such income required to be excluded and thus, the stand of the appellant that they were joint family properties and therefore the income therefrom was not assessable on that count in their individual hands was been upheld.

8. In the proceedings before the CIT(A) against the order of assessment dated 30.11.2006 in the case of K.Ramesh (HUF) which is the subject matter of this appeal, the Assessee contended that K.Ramesh (HUF) was Partitioned on 14.1.2005 and the partition deed was registered on 12.2.2005. The further contention of the Assessee before CIT(A), was that the joint family ceased to exist the HUF as on the date of order of assessment and HUF was never assessed to tax in such status in the past and therefore the HUF was not a “hitherto assessed HUF” u/s. 171 of the Act and therefore assessment order in the status of a HUF was invalid, void in law and had to be annulled. The Assessee relied on the decision of **the Hon'ble jurisdictional High Court in the case of CIT V. LAKANNA in ITA No.57/1994 DATED 26/04/2005 wherein the Hon’ble Court** dealt in extenso of making an assessment on the HUF, which was not a hitherto assessed u/s. 171 of the Act as in the case of the Assessee, which ceased to exist at the time of assessment. The Hon’ble Court had to deal with the following substantial question of law in the case of Lakanna (supra):

> *I. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee – HUF could not have been assessed to income-tax in 1980-1981 on account of the fact that there was a partition in the joint family subsequent to the last day of the accounting year?*

II. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of Section 171 were not applicable to this case in as mirth as the assessed – HUF had not been assessed earlier to 1980-1981?'

9. The facts of the case which related to AY 1980-81 were that prior to the assessment year 1980-1981, M/s Lakkanna and Sons — assessee was not assessed as a HUF in the past. It was only for the first time in the Assessment for AY 1980-81, by a letter dated 30.08.1980, the assessee had informed the Income Tax Officer, that there was a total partition of the HUF on 25.4.1980, much prior to passing of the assessment order i.e., on 28.11.1980. Therefore the HUF was not in existence on the date when the assessments were concluded by the Income Tax Officer. It was the contention of the Assessee that the Income Tax Officer could not have assessed the assessee as HUF after the disruption of HUF status of the assessee since the HUF had not assessed in that status prior to the relevant assessment year. The Hon'ble High Court held as follows:

12. The rationale for the introduction of Section 25(A) in the Indian Income Tax Act. 1922 which corresponds to Section 171 of the Income Tax Act,1961, the Apex Court in the case of LAKHMICHAND BAIJNATH vs. COMMISSOINER OF INCOME TAX reported in (1959) 35 ITR 416 (SC) at Pg 421 has held as under:

> "When the assessee was Undivided no assessment could be made thereon at the time of the assessment it had become divided because at that point of time, there was no undivided family in existence which could be taxed, though when the income was received in the year of account the family was joint, nor could the individual members of the family be taxed in respect of such income as the same is exempt from tax under section 14(1) of the Act. The result of these provisions was that a joint family which had become divided at the time of the assessment escaped tax altogether. To remove this defect, s. 25A enacted that until an order is made under that section, the family should be deemed to continue as an undivided family."

> 13. From the aforesaid observation it is clear that the assessee is an undivided family no assessment can be made thereon if at the time of assessment it has become divided, because at that point of time there was no undivided family in existence which could be taxed, though when the income was received in the year of accounts the family was joined. In other words under the Income Tax Act, the definition of 'person' includes a HUF though it is not a legal entity or a juristic person. Section 4 of the Act is a charging section. The tax shall be assessed in respect of the total income of the previous year of every person. In the scheme of the Act, every person whose total income exceeds the maximum amount which is not chargeable to Income Tax shall furnish the return of his income before the date as provided under Section 139 of the Act When such return is filed, the assessment is done in accordance with the procedure prescribed under the Act. However, if no such return is filed by a person and the income has escaped assessment under Section 147, the Assessing Officer has been vested with the power to reopen the assessment. However, before embarking upon such reassessment, he shall Issue notice as contemplated under Section 148. It is only after hearing the person, the order of assessment could be made under Section 148. Therefore, under the scheme of the Act, an order of assessment could be passed against the person who is in existence on the day the order is passed."

10. It was argued that from para 13 of this judgment as reproduced above, it comes out that it was held by Hon'ble Karnataka High Court that no assessment can be made on a HUF if at the time of assessment, it has become divided because at that point of time, there could be no undivided family in existence which could be taxed though when the income was received in the year of accounts, the family was joint. In the present case also, the Assessment Order is dated 30.11.2006 and HUF was disrupted by partition deed dated 14.1.2005 which was registered on 12.2.2005. Hence, from the facts of the present case it is clear that when the Assessment Order was passed by AO under section 143 r.w.s. 147 of the Act, for Assessment Year 2002-03, the HUF was not in existence because the same was already partitioned on 14.1.2005. Therefore if on the date of assessment, the HUF is not in existence, then such HUF cannot be taxed even for an earlier year when the income was received.

11. The CIT(A) however did not agree with the contention of the Assessee and he held (i) when the income was assessed in the hands of the individual, the plea that the income was assessable in the status of an HUF was accepted by the Hon'ble Karntaka High Court and therefore the assessment in the status of the HUF was valid. (ii) The factum of partition of the HUF prior to passing the order of assessment in the case of the HUF does not emanate from the order of the Hon'ble High Court. The following were the relevant observations of the CIT(A).

> "6. The action of the AO in re-opening the assessment proceedings and concluding the same in the status of HUF, on protective basis, was in view of the Assessee's claim that, it continued to press the issue of status, inspite of the Hon'ble ITAT's finding that, impugned incomes were assessable in the individual hands. The purpose therefore for the protective assessment was to safeguard the interest of the revenue and await the finalization of the issue by the jurisdictional Hon'ble High Court of Karnataka. in these facts and circumstances there is no legal infirmity in the AO's action.
>
> - It is seen that the Hon'ble Karnataka High Court in the case of the same family in its order in ITA No. 96, 97 and 98 of 2009 dated 08/12/2014 has finally held that, the impugned assessments were to be made in the hands of HUF and not individual. Therefore the earlier findings of the Hon'ble ITAT were set-aside. The relevant portion of the Hon'ble Karnataka High Court order (Cited supra) are extracted as under:
>
> > "These three appeals are preferred by three brothers who belonging to the joint family, challenging the order passed by the Tribunal which has held the property in dispute is an individual property of these appellants and accordingly assessment orders are framed. The tribunal came to that conclusion on the basis of the order passed by the Tribunal for the earlier years. The orders passed by the Tribunal for

the earlier years was the subject matter of the appeals before this court in Appeal Nos. 52, 53 and 54 of 2006. The said appeals were preferred by the Assessee and this Court by its order dated 03/10/2012 allowed these appeals and held the property in dispute is a joint family property and accordingly relief was granted.

2. In view of the aforesaid undisputed facts, these three appeals are to be allowed, setting aside the order passed by the Tribunal holding that the property in dispute is an individual property and holding that it is a joint family property. Accordingly, the Assessing authority shall grant relief in terms of the said order.

The substantial questions of law which are raised for consideration as set out in the appeal memo are answered in favour of the assessee and against the revenue."

- In background of the above facts & circumstances, the action of the AO in initiating and concluding the impugned assessment in the hands of HUF stand fully vindicated by the findings of the Hon'ble Karnataka High Court. The protective assessments made by the AO therefore stand validated.

- The Assessee has claimed that, the HUF, under reference no longer survives in light of the subsequent partition. However, these facts regarding partition are neither fully substantiated nor emanating from the orders of the Hon'ble High Court (cited-supra). In these facts & circumstances the present assessment u/s. 143(3) r.w.s. 147 is to be upheld."

12. Aggrieved by the order of the CIT(A), assessee has preferred present appeal before the Tribunal. We have heard the parties. Ground No.3.1 raised by the assessee in the grounds of appeal which relates to the validity of assessment made in the hands of the HUF, reads as follows:

[3.1] The authorities below failed to appreciate that the joint family of the appellant stood disrupted on 14/01/2005 and

thereafter, there was no joint family of the appellant in existence on the date of passing the assessment order and consequently, the impugned order of assessment could not be passed on the non-existent joint family and thus the impugned order passed is opposed to law, illegal and void-ab-initio and consequently, the impugned assessment order passed deserves to be annulled.

13. Since Gr.No.3.1 relates to the preliminary issue of validity of the order of assessment passed in the status of an HUF, the same is being taken up for consideration.

14. The learned Counsel for the assessee brought to our notice decision of the ITAT Bengaluru Bench in assessee's own case for Assessment Year 2003-04 in ITA No.1163/Bang/2013 order dated 7.6.2017. The learned DR on the other hand apart from relying on the order of the CIT(A) made a submission that Chapter XV Section G containing Sec.171, deals with liability in special cases and it is not a general provision. He relied on the following judicial pronouncements: 91 taxman 20 ACIT Vs. Maharani Laxmi Devi (SC); 55 ITR 666 Additional CIT Vs. Thimmaiah (Karn.) 105 ITR 109 Narendra Kumar J Modi

15. We have considered the rival submissions. The question that arises for our consideration is as to whether assessment can be made in the case of disrupted HUF when the HUF ceased to exist on the date when the order of assessment is made. The further question would be as to whether an HUF which was not hitherto assessed in the status of a HUF, can be assessed by taking recourse to Sec.171 of the Act. In this regard, it is undisputed that the assessee HUF was dissolved by a partition amongst its members on 14.01.2005 much prior to the passing of the order of assessment. It is also undisputed that the HUF was never assessed to tax in the past.

16. As far as the question whether assessment can be made on a disrupted HUF after its disruption, the Hon'ble Karnataka High Court has held in the case of CIT Vs. Lakanna & Sons (supra) that no assessment can be made on a HUF if at the time of assessment, it has become divided because at that point of time, there could be no undivided family in existence which could be taxed though when the income was received in the year of accounts, the family was joint. In the present case also, the Assessment Order is dated 30.11.2006 and HUF was disrupted by partition deed dated 14.1.2005 which was registered on 12.2.2005. Hence, from the facts of the present case it is clear that when the Assessment Order was passed by AO under section 143 r.w.s. 147 of the Act, for Assessment Year 2002-03, the HUF was not in existence because the same was already partitioned on 14.1.2005. Therefore if on the date of assessment, the HUF is not in existence, then such HUF cannot be taxed even for an earlier year when the income was received.

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.

18. The Tribunal in Assessee’s own case for AY 2003-04, has also taken same view. For the reasons given above and in the light of the decision of the Hon’ble

Tribunal in assessee's own case, we are of the view that there is merit in ground No.3.1. Accordingly, the assessment in the hands of the HUF is liable to be held as invalid and consequently annulled.

19. As far as the submissions made by the learned DR by placing reliance on the order of the CIT(A) is concerned, the CIT(A) in upholding the action of the AO in initiating and concluding the impugned assessment in the hands of HUF has relied on the findings of the Hon'ble Karnataka High Court. The Hon'ble High Court has given a finding that the income from properties which belonged to HUF cannot be assessed in the hands of the individual. The CIT(A) doubted the very disruption of the HUF. In the light of the documents evidencing partition of the HUF, there was no basis to come to such conclusion. The CIT(A) has not given any findings on the partition. We also find that the Hon'ble High Court was concerned only with the question whether the property in question and income therefrom were to be assessed in the hands of the individual or HUF. There was no occasion for them to go into the question of disruption of HUF and how assessment has to be made of the income in question.

20. We have already discussed the provisions of Sec.171 of the Act and held that those provisions do not apply to the facts of the present case. The fact that Sec.171 of the Act is under the chapter XV section G dealing with liability in special cases, cannot make those provisions applicable when there is absence of a machinery provision to tax income of a disrupted HUF after its disruption when the HUF was not hitherto assessed to tax. With regard to the cases relied upon by the learned DR, we find that in the case of 91 taxman 20 ACIT Vs. Maharani Laxmi Devi (SC), the question of law considered by the Hon'ble

Supreme Court was as to as to whether 1/6th income from computation of income of assessee - Hindu Undivided Family - could be excluded pertaining to the miner son as Maharaja? The facts were that Maharaja P.P. Singh of Balrampur was being assessed as an individual up to and including the assessment year 1964- 65, He had no issue of his own. On December 28, 1963, he adapted Maharaja Dharmendra Pratap Singh, who was a minor, as his son. After the said adoption the status of Maharaja P.P. Singh was taken as that of the Hindu Undivided Family (for short 'HUF'). Maharaja P.P. Singh died on June 20, 1964. Thereafter his wife, Maharani Raj Laxmi Devi, became the karta of the HUF consisting of herself and the afresaid minor son, Maharaja Dharmendra Pratap Singh. For the assessment year 1966-67 the assessee filed. For the assessment year 1966-67 the assesses filed a return declaring the total income of the Huf as Rs. 28935/- Subsequently she filed another return showing the total income as Rs. 25,288/- The difference between the original and revised returns was explained on the basis that the revised return had been filed by the HUF after excluding 1/6th share belonging to the minor son. Maharaja Dharmendra Pratap Singh, As an individual because according to Section 6 of the Hindu Succession Act, 1956, 1/3rd share of Late Maharaja P.P. Singh in the HUF property devolved on his two heirs Maharaja Dharmendra Pratap Singh (minor son) and Maharaja Raj Laxmi Devi (wife). The Income Tax Officer held that the At is a separate, distinct and complete statute in itself and under the Act a changed in HUF status can be effected only by claiming partition either partial or complete and that such partition could become operative if a claim of partition has been preferred and after examining the evidence produced, and order under Section 171 accepting the claim of partition has been accepted by the Income Tax Officer, and that in the case of the assessee both the element where missing. He, therefore, held that the assessee HUF continued to be as it was before. The said view was followed by the Income Tax Officer in the Assessments for the Subsequent assessment

years 1967-68 to 1970-71. The said view of the Income Tax Officer was upheld in appeal the Tribunal reversed the said view and held that the case of the assessee was not of a partition contemplated in Section 171 and, therefore, no claim was necessary and absence of an order under section 171 does not mean that the whole estate should be deemed to belong to the assessee HUF. The Hon'ble High Court affirmed the view of the Tribunal. On further appeal, the Hon'ble Supreme Court held that in cases of partial partition by way of voluntary act of the parties those cases are directly covered by Section 171 of the Act. But where a claim was made on the basis of statute, viz., the provisions of Section 14(1) or Section 6 of the Hindu Succession Act, 1956, insofar as income tax law is concerned the matter has to be governed by Section 171(1) of the Act. The aforesaid decision is on completely different facts and not applicable to the present case in which the HUF was never assessed to tax prior to its disruption and hence provisions of Sec.171 of the Act are not attracted at all. The decision in the case of Thimmaiah (supra) is on a different point as to whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the Income-tax Officer, while passing the order under section 155 of the Act, was not justified in treating the share income of profit from the partnership firms as unearned. The same is of no relevance to the present case. The decision in the case of Narendra Kumar J. Modi 105 ITR 109 (SC) is a case where there was a challenge to an order passed under Sec.25A (3) of the Income Tax Act, 1922. The Hon'ble Supreme Court held that Sub section (3) of s. 25A provides that where an order accepting partition had not been passed in respect of a Hindu Undivided Family assessed as undivided, such family shall be deemed for the purposes of the Act to continue to be Hindu Undivided Family. It was further held that a junior member of the family can, with the consent of all the other members act as a karta, if the senior member gives up his right. The aforesaid decision has no application to the facts of the present case.

21. For the reasons given above, we allow the appeal of the Assessee and hold that the assessment in the hands of the HUF is liable to be held as invalid and consequently annulled. In view of the above conclusion the other grounds of appeal are not taken up for consideration.

22. In the result, the appeal of the Assessee is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	*Sd/-*
(B. R. BASKARAN)	**(N. V. VASUDEVAN)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

Bangalore,
Dated : 20.09.2021.
/NS/*

Copy to:
1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.