

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - A” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA No.1749/Bang/2016
Assessment year : 2013-14

Sri Rajaram Kannan, No.98, 6 th Cross, Cambridge Layout, Ulsoor, Bengaluru – 560 008. PAN: AEVPK 0248M	Vs.	The Income Tax Officer, Ward 5(3)(2), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Prathiba R., Advocate
Respondent by	:	Shri R.K. Jha, Jt. CIT(DR)

Date of hearing	:	27.12.2016
Date of Pronouncement	:	28.12.2016

ORDER

This appeal is preferred by the assessee against the addition confirmed by the CIT(Appeals) with regard to capital gains accrued on sale of property jointly owned by the assessee and his mother.

2. During the course of hearing, the Id. counsel for the assessee has invited our attention that though property was jointly owned by the assessee and his mother, but the capital gain accrued on sale of the property was offered to tax by the assessee's mother. Therefore, corresponding capital gain should not be taxed in the hands of the assessee

3. The Id. DR, on the other hand, has submitted that undisputedly the property was jointly owned by the assessee and his mother and once the property is sold and capital gain is accrued thereon, it should have been offered to tax by the assessee and his mother in their respective hands in equal share. But the assessee did not offer it to tax, whereas his mother has offered the capital gains to tax on the sale of entire property. Therefore, the revenue has rightly assessed half of the capital gains in the hands of the assessee.

4. Having carefully examined the orders of lower authorities, we find that undisputedly property was jointly owned by the assessee and his mother and capital gains tax accrued on the sale of this property was offered to tax by the assessee's mother, but assessee did not offer it to tax; whereas the assessee ought to have offered half of the capital gains to tax. It is settled position of law that income has to be properly assessed in the right hands. If the assessee jointly owned the property and the property was sold, capital gain ought to have been offered by both the co-owners on its sale. Therefore, I am of the view that capital gain charged in the hands of the assessee is correct, but since his mother has already offered the entire capital gain to tax on the sale of property, the corresponding benefit should be given to the mother. Accordingly, I direct the Assessing Officer in the case of assessee's mother to refund the excess capital gains tax charged in the hands of the mother, as the corresponding capital gain has

been assessed in the hands of the assessee. Accordingly, the appeal of the assessee is disposed of.

5. In the result, the appeal by the assessee is dismissed.

Pronounced in the open court on this 28th day of December, 2016.

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 28th December, 2016.

/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.