

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

BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER

ITA Nos.1232 to 1242/Bang/2015
Assessment years : 1987-88 to 1997-98

M/s. Famous Commercial Complex, Near City Bus Stand, Udupi. PAN: AACFF 0317M	Vs.	The Income Tax Officer, Ward 1, Udupi.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Prathibha, Advocate
Respondent by	:	Dr. P.K. Srihari, Addl. CIT(DR)

Date of hearing	:	23.12.2015
Date of Pronouncement	:	30.12.2015

ORDER

These eleven (11) appeals are filed by the assessee against the common order dated 11.03.2015 of the CIT(Appeals), Mangaluru pertaining to assessment years AYs 1987-88 to 1997-98. All these appeals involving identical issues were heard together and are disposed of by this consolidated order.

2. For the AY 1987-88, the assessee had filed the return of income in ITS 2 in the status of URF on 15.03.1993 admitting an income of 22,865 under the head 'business'. The assessee's only source of income was rental income and the income was declared under the head 'business' after claiming various expenses like salary, postage, repairs, printing, car maintenance, etc. Since the return was filed after the specified time u/s. 139, the income from rentals was computed as 'business income' instead of computing under the head 'house property'. The assessments were reopened and assessments completed u/s. 147. In doing so, the Assessing Officer held the assessee firm is the owner of property and followed the decisions in the case of *D.R. Puttanna Sons Pvt. Ltd. (162 ITR 468)* and the Hon'ble Supreme Court decision in the case reported in *83 ITR 700*. and the AO subject the entire receipts from commercial complex in the hands of AOP.

3. The assessee filed appeals for the AYs 1987-88 to 1997-98 before the CIT(Appeals) which were dismissed, agreeing with the findings of the AO on merits.

4. On further appeals before the Tribunal in ITA Nos.1181 to 1191/Bang/2009 for the AYs 1987-88 to 1997-98. The Tribunal vide its order dated 18.03.2010 set aside the matter to the Assessing Officer to verify, whether the firm was actually in existence or not?

5. In order to throw some light on the sequence of events, it is to be highlighted that the assessee has not brought to the notice of the ITAT Bench while hearing ITA Nos.1181 to 1191/Bang/2009 with respect to the earlier order of the Tribunal dated 31.12.2001 in ITA Nos. 743 to 749/Bang/1989 for the AYs 1987-88 to 1993-94, wherein it has been held by the Tribunal at para 9 of its order as follows:-

“9. Now, we have to consider whether the above three essential requirements are fulfilled in the case of our hand. It is an admitted case of both parties that there was an agreement between the partners of the firm. The agreement evidences the sharing of profit of business equally among the partners. This business of the firm as per the agreement is to be carried on by Shri Ameeruddin, as Managing partner on behalf of all the partners. Since both parties concede that the income from tenant is ‘income from house property’, and there is no other business for the firm except letting out the buildings, we are of the considered opinion that there is no business for the firm to share the profits of the business amongst the partners. Hence, the second requirement of sharing of profit of a business is not satisfied. **Hence, there is no valid firm. In other words, since there is no business, no valid firm is in existence in the eyes of law.**”

(emphasis supplied)

6. When the matter was heard by the Tribunal in ITA Nos.1181 to 1191/Bang/2009 for the AYs 1987-88 to 1997-98, the Tribunal in its order dated 18.03.2010 at paras 9.4 and 9.5 held as follows:-

“9.4 The next question to be considered is what should be the status for assessment? It is possible to assess in the status of an AOP representing an impartible estate.

9.5 The Assessing Officer is accordingly directed to determine the status and complete the assessment and allocate the income, after examining the present facts of the case and hearing the assessee in detail.”

7. It is therefore clear from the records that the benefit of order of the Tribunal dated 31.12.2001 of the Tribunal in ITA Nos.743 to 749/Bang/1989 was not available to the Bench, while passing the Tribunal's order dated 18.03.2010 in ITA Nos.1181 to 1191/Bang/2009, because of the lapse on the part of the assessee to produce the same before the Bench. The Department had gone on further appeal before the Hon'ble High Court of Karnataka against the Tribunal's order dated 18.03.2010 in ITA No.228 of 2003. The Hon'ble High Court by its judgment dated 13.11.2007 had set aside the matter to the Assessing Officer to consider the issue afresh.

8. In pursuance of the High Court judgment, assessment order was passed by the Assessing Officer on 31.12.2008 and in the second round the same was upheld by the CIT(Appeals) and thereafter reached the Tribunal, wherein the Tribunal passed the order in ITA Nos.1181 to 1191/Bang/2009. Once again, the Department took up the matter to the Hon'ble High Court of Karnataka, which dismissed the departmental appeals on the ground of monetary limit for preferring the appeals by the Revenue before the High Court.

9. Suffice it to say that the entire exercise has been futile. The ld. counsel for the assessee has filed additional grounds of appeal for all the years under consideration stating that the order dated 31.12.2001 in ITA Nos. ITA Nos.743 to 749/Bang/1989 wherein it has been clearly held that the firm is not in existence had not been pointed out to the Bench while passing the order dated 18.3.2010 in ITA Nos.1181 to 1191/Bang/2009 and therefore a serious mistake has crept in, which had given rise to a situation where the entire matter had been agitated in appeal upto the Hon'ble High Court in the first and second round of appeals. It was therefore pleaded that the additional grounds now raised goes to the root of the matter and the same may be admitted.

10. We have heard both the parties and perused the material on record. Since the additional grounds are very relevant for the deciding the issue, we admit the same. The issue of very existence of the firm is sent back to the file of the Assessing Officer, who shall go through the order of the Tribunal dated 31.12.2001 in ITA Nos. 743 to 749/Bang/1989 and the subsequent Tribunal order dated 18.3.2010 in ITA Nos.1181 to 1191/Bang/2009 and thereafter the AO shall decide the issue in accordance with law after providing reasonable opportunity of being heard to the assessee.

11. In the result, all the appeals of the assessee are allowed for statistical purposes.

Pronounced in the open court on this 30th day of December, 2015.

Sd/-

(ASHA VIJAYARAGHAVAN)
Judicial Member

Bangalore,
Dated, the 30th December, 2015.

/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.