

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'C', BANGALORE**

**BEFORE SHRI A.K.GARODIA, AM (SMC)**

**ITA Nos.261 & 262(B)/2016  
(Assessment years : 2006-07)**

Shri L.S.Prabhakar,  
F1 Sreekantha Krupa,  
No.16, Railway Parallel Road,  
Nehrunagar,  
Bangalore-560 020  
**PAN No.AAAHP 5740G**

Appellant

**Vs**

The Income Tax Officer,  
Ward-6(3),  
Bangalore

Respondent

**Assessee by : Shri S.Ramasubramanian, CA  
Revenue by : Smt. Swapna Das, JCIT**

**Date of hearing : 05-07-2016  
Date of pronouncement : 15-07-2016**

**ORDER**

**PER SHRI A.K.GARODIA, AM:**

Both these appeals are filed by the assessee who are interconnected being the same person in his individual capacity as well as in HUF capacity. Both these appeals were heard together and are being disposed of by way of common order for the sake of convenience.

2. The grounds raised by the assessee in both these appeals are as under;

**In ITA No.261(B)/2016 (AY: 2006-07)**

*"1. That the order of the learned Commissioner of Income-tax (Appeals) in so far it is prejudicial to the interests of the appellant is bad and erroneous in law*

*and against the facts and circumstances of the case.*

*2. That the learned Commissioner of Income-tax (Appeals) erred in law and on facts in treating the return of income of the firm as return of income of HUF.*

*3. That the learned Commissioner of Income-tax (Appeals) erred in law and on facts in changing the status to HUF without giving opportunity of being heard to the appellant.*

*4. That the learned Commissioner of Income-tax (Appeals) ought to have held that the status is a firm and the assessment should have been done in the name of M/s. Sesha & Company.*

*5. That the learned Commissioner of Income-tax (Appeals) ought to have allowed the set off of the carried forward loss to the extent of Rs.6,91 ,273/- against the income of M/s. Sesha & Company.*

*6. That the order passed by the learned Assessing Officer in the status of individual is liable to annulled and cancelled.*

*Each of the above grounds is without prejudice to one another and the appellant craves leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or otherwise modify one or more of the above grounds either before or the time of hearing of this appeal.*

**In ITA No.261(B)/2016 (AY: 2006-07)**

- 1. That the order of the learned Commissioner of Income-tax (Appeals) in so far it is prejudicial to the interests of the appellant is bad and erroneous in law and against the facts and circumstances of the case.*

2. *That the learned Commissioner of Income-tax (Appeals) ought to have held that the status is a firm and the assessment should have been done in the name of M/s. Sesha & Company.*
3. *That the learned Commissioner of Income-tax (Appeals) ought to have allowed the set off of the carried forward loss to the extent of Rs.6,91,273/- against the income of M/s. Sesha & Company.*
4. *That the order passed by the learned Assessing Officer in the status of individual is liable to annulled and cancelled.*

*Each of the above grounds is without prejudice to one another and the appellant craves leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or otherwise modify one or more of the above grounds either before or the time of hearing of this appeal”.*

3. At the very outset, it was submitted by the ld.AR of the assessee that in the present case, the business was being carried on by a partnership firm in the name of M/s Sesha & Company and till assessment year 2004-05, the return was filed by the firm with the PAN number of the firm and there was no dispute. It was also submitted that copy of the return filed by the firm for AY: 2002-03 is available on page no.25, for the AY: 2003-04 is available on page-26 and for the AY: 2005-06 is available on page-27 of the paper book. For AY: 2005-06, copy of the return filed is available on page no.28 of the paper book and in this year, a mistake was committed and the return was filed in the

name of Shri L.S.Prabhakar, Prop: M/s Sesa & Company and PAN given in the return of income is the PAN of Shri S.K.Prabhakar in HUF capacity. In spite of this, there was no dispute in that year because there was no scrutiny assessment in that year. Copy of the return of income filed by the assessee for the present year i.e. AY: 2006-07 is available on page-18 of the paper book and in this year also, the return was filed with the same mistake in the name of Shri S.K.Prabhakar Prop: M/s Sesa & Company with the PAN of Shri L.S.Prabhakar (HUF). He further submitted that in the present year, the AO has completed the assessment in the name of Shri L.S.Prabhakar in his individual capacity and although the income is assessed at the same amount as declared in the return of income i.e. Rs.6,91,273/- but the set off of brought forward losses was not allowed because brought forward losses were belonging to the partnership firm. When the assessee carried the matter in appeal before the Id.CIT(A), it was held by the Id.CIT(A) that since the PAN given in the return of income is the PAN of HUF, the income should be assessed in the name of the assessee in his HUF capacity. He submitted that under these facts, the matter may be restored back to the file of the AO for fresh decision after examining whether the income in fact belongs to partnership firm or the individual or to the HUF because it is settled proposition of law that income should be assessed in correct hands and merely for this reason that in the return of income filed by the assessee, the name of the partner of the firm was mentioned wrongly instead of the name of the firm and the

PAN of HUF was given by mistake, it cannot be said that income belonging to the firm was the income of the individual or HUF.

4. The ld. DR of the revenue supported the order of the ld.CIT(A).

5. I have considered the rival submissions and have gone through the material on record. I find that as per the profit & loss account and the balance sheet available on page-19 & 20 of the paper book, the same is of M/s Sesha & Company. On page-22 of the paper book is the capital account of Shri L.S.Prabhakar and as per the same, it is seen that the entire amount of profit shown in the P&L account being the amount of Rs.6,91,273/- has been credited to his capital account. If it is accepted that the income in question is of the partnership firm and Shri L.S.Prabhakar is not the Proprietor of M/s Sesha & Company, then the entire income of the firm cannot be credited to the capital account of one person because to constitute a partnership firm, there has to be minimum two persons and profit of the firm has to be shared by those partners in their profit sharing ratio and hence, it cannot be taken in full by one person. This fact suggests that M/s Sesha & Company is not a partnership firm in the present year at least. But since there is no clear cut finding on this aspect by any of the authorities below and it is also not clear as to whether Shri L.S.Prabhakar is a partner/Prop of the concern i.e. M/s Sesha & Company in his individual capacity or HUF capacity, I feel it proper that this matter should go back to the file of the

AO for a fresh decision and hence, I set aside the order of the Id., CIT(A) and restore the matter back to the file of the AO for fresh decision with a direction that he should examine as to whether the concern M/s Sesha & Company is a proprietorship concern or partnership firm in the present year in the light of facts noted above that entire profit is credited to the capital account of one person. If it is a partnership firm then he has to find out who are the partners of the firm and if one partner is Shri L.S.Prabhakar then whether in individual capacity or HUF capacity and while doing so, he should provide adequate opportunity of being heard to the assessee. If it is found that this is a proprietorship concern then to find out who is the proprietor and in which capacity i.e. in individual capacity or HUF capacity. I also want to make it clear the burden is on the assessee to establish that the concern M/s Sesha & Company is a partnership concern in the present year. For this purpose, he may also furnish a certificate from the bank because as per the return of income filed by the assessee in the present year available on page-18 of the paper book, the assessee has given particulars of bank account being current account with SBI a/c No.10323661290. As per the same form no.2 in the income tax return available on page-18 of the paper book, it is stated by the assessee that he is furnishing audit report in form no.3CD, but in the paper book, the audit report is not made available. In fact, the Trading and P& L account and Balance sheet etc. available on page-19 to 23 of the paper book are un-audited. The assessee should bring on record the audit

report also as stated in the return of income and it will help in deciding the issue as to whether Sesha & Company is a partnership firm or proprietorship. He should bring on record the partnership deed also and he should produce the other partners as per the partnership deed if any, brought on record by the assessee. The AO should pass necessary order as per law after providing adequate opportunity of being heard to the assessee.

6. In the result, both the appeals are allowed for statistical purposes.

Order pronounced in the open court on the date mentioned in the captioned order.

**Sd/-**  
**(A.K.GARODIA)**  
**ACCOUNTANT MEMBER**

D a t e d : 15- 07-2016

Place: Bangalore

**am**

**Copy to :**

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

By order  
AR, ITAT, Bangalore

1.	Date of Dictation .....
2.	Date on which the typed draft is placed before the dictating Member .....
3.	Date on which the approved draft comes to the Sr. P. S. ....
4	Date on which the order is placed before the dictating Member for pronouncement .....
5.	Date on which the order comes back to the Sr. P.S. ....
6.	Date of uploading the order on website .....
7.	If not uploaded, furnish the reason for doing so.....
8.	Date on which the file goes to the Bench Clerk .....
9.	Date on which order does for Xerox & endorsement .....
10.	Date on which the file goes to the Head Clerk.....
11	The date on which the file goes to the Assistant Registrar for signature on the order.....
12	The date on which the file goes to the dispatch section for dispatch of the Tribunal order.....
13	Date of dispatch of order.....