IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH, NEW DELHI

BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER

ITA No. 2745/DEL/2017 [A.Y. 2012-13]

Shri Ashwani Kumar Tyagi S/0 Shri Rameshwer Dayal Tyagi 1/1, Tyagi House, Village Bhangel Begampur, Phase – II, Noida	Vs.	The I.T.O Ward 1(1) Noida

PAN : AAYPT 1648 K

[Appellant] [Respondent]

Date of Hearing : 12.10.2017
Date of Pronouncement : 18 .10.2017

Assessee by : Shri K.P. Garg, CA
Revenue by : Shri T. Vasanthan Sr. DR

ORDER

This appeal of the assessee arises from the order of the ld. CIT(A)-1, Noida vide order dated 24.02.2017 for assessment year **A.Y. 2012-13**.

2. The assessee has raised following grounds of appeal:

"1. That the learned Commissioner of Income tax (Appeals) has erred in law and on facts in confirming the impugned order of the Assessing Officer, which is bad in law and without jurisdiction.

2. That the learned Commissioner of Income tax (Appeals) has erred in law and on facts in treating the assessee as an individual for income of the joint hindu family of which he is the karta.

3. That the learned Commissioner of Income tax (Appeals) has erred in law and on facts in not accepting that the impugned agricultural land was ancestral coparcenary property passed on from Shri Ghisa to the joint families of Fateh Singh (Son), Rameshwer Dayal (Grand Son) and Naveen Kumar (Great Grand Son) by survivorship to the HUF of Shri Naveen Kumar Tyagi, incorrectly relying on S. 18 of the UP Zamidari Abolition and Land Reforms Act, 1950, ignoring S.37, which clearly provides for treating the Jt. Hindu Family as a separate unit.

4. That the learned Commissioner of Income tax (Appeals) has erred in law and on facts in failing to consider that the Hindu Succession Act, 1956 has not abolished the structure of a Joint-Hindu Mitakshara family, it in fact enlarges the concept, by substituting S.6 to bring the daughter at par with a son, making her a coparcener, so that now every son and daughter acquires by birth a coparcenary interest in the ancestral property.

5. That the learned Commissioner of Income tax (Appeals) has erred in law and on facts in dismissing the claim of the HUF, merely on the ground that the bigger family Rameshwer Dayal Tyagi (HUF), who received the compensation on account of acquisition of family Agriculture land by the state Govt, did not file any Return of Income under the Act, ignoring that

agricultural income was not liable to tax under section 10(37) of I. T. Act, 1961 and the family had no other income.

6. That the learned Commissioner of Income tax (Appeals) has erred in law and on facts that on account of death of Rameshwar Dayal Tyagi on 17th October, 2007, three smaller HUFs came into existence that of his three sons viz. Ashwani Kumar, Naveen Kumar and Rajeev Kumar and the interest on delayed payment of compensation of Rameshwer Dayal Tyagi (HUF) was released/distributed/paid to the three smaller HUFs (Coparcenaries).

7. That both the Id AO and the Id. CIT(A) have ignored that the order of partition of a joint hindu family can be passed by an Assessing Officer only where the HUF is assessed to income tax, and where the family has only agricultural income and not liable to income tax, no such order can be passed u/ s. 171 of the Act.

8. That the learned AO has erred on facts in law in bringing to tax in the hands of the Assessee individual a sum of Rs.32,98,322/- (net of deduction u/s.57(iv)), gross amount of interest on delayed payment of compensation as allocated to the Naveen Kumar Tyagi, HUF, merely because the bigger HUF of Shri Rameshwar Dayal Tyagi have not filed their return under the Income Tax Act for the AY 2009-10 and thereafter the relevant smaller HUFs have also not filed their returns under the Act.

9. That the learned AO has erred on facts and in law and the ld. CIT(A) in confirming his order, in bringing to tax in the hands of the Assessee individual a sum of 15,67,099/- on account of share of capital gains of the bigger HUF amounting to Rs.62,68,394/-arising from the sale of ancestral coparcenary property, which on account of death had devolved on the three small HUFs, merely because the bigger HUF of Shri Rameshwar Dayal Tyagi have not filed their return under the Income Tax Act for the AY 2009-10 and thereafter the relevant smaller HUFs have also not filed their returns under the Act."

3. Facts, in brief, as emanating from the order of the Assessing Officer are reproduced hereinbelow:

"The crux of the. case is that assessee has received interest on delayed payment of compensation which has not been disclosed in the return of income under the impression that it is exempt from tax. It is material to add here that this case was selected "in scrutiny to examine the undisclosed interest. income of Rs.45,00,825/- (TPS of Rs.426676) in the return of income as per 26As of the assessee..

From the reply, the assessee immediately confessed the error of non disclosure of interest of income hence undoubtedly it can be inferred that inspite of huge receipt of interest income, he has not disclosed this income under the impression that it is exempt from tax but the action of the assessee gives impression that he is trying to mislead the department. In fact this interest income on

which TDS also made but as non disclosure was beneficial in terms of amount of tax involved hence he preferred to keep it out of records assuming that it is exempt. It is learnt that scrutiny proceedings on identical nature in the case of assessee's brother namely Sri Naresh Tyagi and Satish Tyagi are pending for disposal.

On 16.10.2014, the learned counsel of the assessee come up with a different stand

(i) That ancestral lands were acquired by Noida Authority and compensation awarded in 1989 to the father of the assessee in his HUF capacity and no taxes were paid.

ii) That the corpus of the HUF of father under the name of Sri R.D.Tyagi HUF existed in the form of lands and other properties and compensation received by the father in his HUF status and invested further in the various assets.

iii) That the interest income on delayed compensation amounting to Rs. 19826807- 1/3rd of Rs.5948042) received by the assessee is belonging to the smaller HUF of the assessee. Ashwani Kumar Tyagi, HUF and is liable for taxes if any and not the assessee.

iv) That the assessee HUF' was always existing after the demise of his father in 2007, as the smaller HUF but the income not being taxable, the returns were not being filed.

v) That the assessee had also not obtained the PAH of his HUF and therefore, the assessee individual PAN was used by the Noida Authority to deduct his tax which is actually belonging to the HUF of the assessee in respect of the interest income and the TDS.

vi) That the proceedings initiated in the case of the assessee assuming that the interest income on delayed compensation is belonging to the assessee is not correct and justified. In addition to above, lastly it is submitted that assessee has complete history and the High Court orders to substantiate his contentions. ”

On going through the contents of above submission it is perceived that scrutiny proceedings be dropped because the interest income belonged to assessee HUF which is not in-existence . No proof whatsoever; of alleged formation of HUF has been filed.

This confusing submission was beyond understanding hence this matter was discussed with the counterparts who apprised that in the case of Sri Satish Tyagi, directions u/s 144A have been sought from JOT.

The JCIT,Range-2,Noida vide order dated 23.2.2015 held that dispute whether the said acquired land belonged to Individual or HUF is totally irrelevant in the context of U.P.Zamindari Abolition and Land Reforms Act, 1950. In this connection, decision of Hon’ble Allahabad High Court in the case of Controller of Estate Duty Vs.Sheila Prasad 143 ITR 458 is referred , wherein it was observed that:

> *“the bhumidari rights created u/18 of the U.P.Zamindari Abolition and Land Reforms Act were new rights and that such*

rights were not possessed by the deceased prior to the conferment thereof by the said Act, and that whatever right the deceased had in such property in his capacity as karta of the HUF came to be extinguished on the vesting of that estate in the Government and further the bhumidari rights conferred by the said Act belonged to the co-owners and not to the HUF."

Thus the JCIT, Range-2, Noida has rejected the contention of the assessee holding that it is taxable in individual capacity. Para-2 of citation putforth by the assessee went against the assessee therefore, income from ancestral properties would be included in the individual hands and not in the capacity of HUF.

Following the above directions which are obviously applicable to all co-owners including my assessee, the assessment order is passed on the same line but before summing up the case, following facts need to be mentioned:-

It is a fact that assessee has attempted to evade the interest income received by him in his individual capacity. Fie has provided his individual PAN to the Noida Authority that is why interest is appearing in his 26AS. This is purely an after thought. There was no partition/setting up of an HUF at any stage.

In the initial stage(vide reply on 15.9.2014), the assessee took plea that he was under the impression that interest received on compensation is exempt The reply revealed that he was in a mood to pay the taxes. But in reply dated 16.10.2014, the

assessee took U turn and started claiming interest belonged to HUF. Apart from directions issued by the .TOT,Range-2, Noida there is no ambiguity about the treatment of interest which was not disclosed in the return of income. Had the facility of 26AS not been there, the assessee would have escaped this income . Thought of creation of HUF comes in..picture when notice u/s 143(2) is served upon the assessee it is worth to mention that HUF is a separate entity under the provisions of Section 2(31) of the Income tax Act, 1961. This is in addition to an individual as separate taxable entity. No HUF has been formed neither it is paid or disclosed in me capacity of HUF hence it is taxable in individual capacity of the assessee. Moreover, as held in the case of Controller of Estate Duty Vs. Sheila Prasad, 143 1TR 458, it has been observed by the Hon'ble Allahabad High Court that the bhumidari rights created u/s 18 of the U.P.Zamindari Abolition and Land Reforms Act were new rights and that such rights were not possessed by the deceased prior to the conferment thereof by the said Act, and that whatever right the deceased had in such property in his capacity as "karta of the HUF came to be extinguished on the vesting of that estate in the Government, and further the bhumidari rights conferred by the said Act belonged to the co-owners and not to the HUF. In the light of this decision and observations, it is held that rights of the HUF came to be extinguished after the enactment of U.P.Zamindari Abolition and Land Reforms Act, 1950 and the claim of the assessee that the said land belonged to assessee HUF is not tenable. Accordingly, interest income received on enhanced compensation is taxable u/s 56(2)(viii) of the Act and

liable to be added. While taxing this interest income, a deduction of 50% of such amount u/s 57(iv) will be allowed.

Keeping in view the above discussion, the 50% of interest income of Rs.45,00,825/-as appearing in 26AS is added in the income of the assessee as income from other sources. This will mean an addition of Rs.22,50,413/-(50% of Rs.4500825).As the assessee has not disclosed this interest income in the return of income, it is a case of concealment of income/furnishing of inaccurate particulars for that penalty proceedings u/s 271 (1)(c) are initiated separately."

4. When the assessee went in appeal before the ld. CIT(A), he was not given relief. The ld. CIT(A) confirmed the action of the Assessing Officer and his order is reproduced hereinbelow for ready reference:

"The issue is no longer res-integra as in the case of the full blood brother of the appellant where also the same issue was raised I have decided both these issues against the appellant and in favour of Revenue. Respectfully following my earlier order there was no such HUF in subsistence and the compensation received by the appellant is to be taxed as income of the appellant and not as the income of the alleged HUF as has been sought to be done by the ld. counsel of the appellant."

5. Aggrieved by the order of the ld. CIT(A), the present appeal is filed by the assessee before this Tribunal.

6. I have heard both the sides and perused the relevant material on record. The only issue involved in this appeal is whether the impugned agricultural land was ancestral coparcenary property passed on from Shri Ghisa to the joint families of Fateh Singh (Son), Rameshwer Dayal (Grand Son) and Naveen Kumar (Great Grand Son) by survivorship to the HUF of Shri Naveen Kumar Tyagi, incorrectly relying on S. 18 of the UP Zamidari Abolition and Land Reforms Act, 1950, ignoring S.37, which clearly provides for treating the Jt. Hindu Family as a separate unit. The main crux of the case lay in the fact of non -payment of tax by the HUF, which has now been paid under the IDS, leaving no ground left for sustaining the addition on any account. None of the HUFs, having only agricultural income was filing any return of income under the Income Tax Act and was never assessed to tax, being not liable to tax. Thus the question of any ITO passing any order u/s.171 of the Act does not arise, nor is applicable to Agricultural families, having no income under the Income Tax Act. Non filing of returns under the Income Tax Act by the HUF was bonafide belief that agricultural income was not liable to tax

under the Income Tax Act. What has been ignored/omitted is the fact that interest on enhanced compensation was taxable and the HUF should have filed its return of income for AY 2012-13, showing income from interest on enhanced compensation. The belief is bonafide and cannot in any manner be attributed to any malafide, merely because the individuals having their independent income from self acquired properties or other activities, had not included the income of the HUF in their return of income, which per se is contrary to law. No individual/Karta is authorized to appropriate and show the income of the HUF in his hands, debarring the other co-parceners of their right claim to the share of HUF properties/assets/income.

7. This fact is clear from the assessment order of the individual assessee, para-2. The same is discussed by the Id. CIT(A) in the case of Shri Naveen Kumar, brother of the assessee, whose order has been followed in the case of the assessee, vide para-3 at pages 24, para-5 page-25, para-8 page-26 of the paper book and his conclusion in para-9, 10 and 11. The crux of his arguments is that an HUF under the Income Tax Act could be **created** only by a gift of property and not by inheritance/succession to the property of the bigger HUF, which is contrary to Hindu Law as well as the Income Tax Act. The background

being the fact that none of the claimed HUFs were ever assessed to tax, which is again erroneous. According to him, if the HUF had filed its return showing the income from interest on enhanced compensation, would have rendered a fool proof evidence of existence of HUF under the Income Tax Act and coparcenary property under Hindu Law.

8. Now the question was how the HUF could now declare its income and file the return, as the Act prohibits the same. Effort was thus made by the assessee to tax the HUF u/s.144A, but was declined by the Id. JCT. Luckily the IDS came into operation and taking advantage of the same, the two HUFs filed a declaration before the Commissioner of Income Tax, Noida declaring the interest on enhanced compensation and paid the tax as per pages 11-23 of the paper book. Obviously this evidence being subsequent could not be filed either before the AO or the Id. CITA, although the fact of offer made before the JCIT u/s.144A has duly been discussed by both. Thus the factual reason to disallow the claim of the HUF is that no such return was filed and no such tax had been paid by the HUF. The issue gets settled by the payment of taxes by the HUF through the declaration made before the Pr. CIT under IDS, which has been accepted, as all taxes have been paid.

Therefore, in such circumstances, and facts of the case, since the HUF has already paid tax due alongwith interest, etc and correct share had been declared at Rs. 27,79,279/- as against lesser amount of Rs. 22,50,413/- taken by both the authorities below, the Assessing Officer is directed to delete the addition so made. Thus, the grounds of appeal raised by the assessee are allowed.

9. In the result, the appeal of the assessee is allowed.

The order is pronounced in the open court on **18**.10.2017.

Sd/-
[B.P. JAIN]
ACCOUNTANT MEMBER

Dated: **18**th October, 2017

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi