

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BENGALURU**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.100/Bang/2016
(Assessment year: 2005-06)

Shri Vijay,
Nallurahalli Village,
Whitefield Post, K.R. Puram,
Bengaluru.
PAN: AEMPAN 8678 R

... Appellant

Vs.

Income-tax Officer,
War 7(4),
Bengaluru.

... Respondent

Appellant by : Shri H.Guruswamy, ITP.
Respondent by : Shri B.R.Ramesh, Joint CIT(DR)

Date of hearing : 24/08/2017
Date of pronouncement : 22/11/2017

ORDER

Per INTURI RAMA RAO, AM :

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals)-4, Bangalore, [CIT(A)] dated 30th November 2015 for the assessment year 2005 06.

2. The assessee raised the following grounds of appeal :

1. The impugned Appellate order dated 30-11-2015 passed by the Learned CIT(A)-4 is opposed to law and facts of the case.
2. The Learned Commissioner of Income-tax (Appeals)-4 has erred in confirming a sum of Rs. 8,99,500/- as income chargeable to Capital Gain Tax without appreciating the facts and circumstances of the case.
3. The Learned Commissioner of Income-tax (Appeals)-4 has erred in holding that the Appellant is liable for Capital Gain Tax on a Sale Consideration of Rs. 8,99,500/- in his individual status without appreciating the facts that the Sale Consideration belonged to the Family of Five members in which the Appellant had 1/5th share
4. The Learned Commissioner of Income-tax (Appeals)-4 has erred in holding that a sum of Rs. 8,99,500/- was chargeable to Capital Gain Tax without appreciating the facts that the Appellants father(Vendor No. 3) has received only a sum of Rs. 6,74,925/- which collectively belongs to all the five Family members since the property sold was ancestral property
5. The Learned Commissioner of Income-tax (Appeals)-4 has erred in holding that the share of sale consideration at Rs. 8,99,500/- without any basis.

For these and other grounds that may be urged at the time of hearing, the Appellant respectfully prays that your Hon'ble Authority be pleased to pass orders deleting the alleged income of Rs. 8,99,500/- confirmed by the Ld. CIT(A)-4 Bangalore and further be pleased to pass such other orders granting such other relief that your Hon'ble Authority may deem fit in the interest of equity and justice.



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3. Briefly facts of the case are as under: The assessee is an individual. The assessee had not filed return of income voluntarily for the assessment year 2005-06. The Assessing Officer, after receipt of information from the office of the Sub Registrar Krishnarajapura, Bangalore, that the assessee at sold property for a consideration of Rs. 59,37,500/- on 23/11/2004 had issued notice u/s 142 of the Income-tax Act,1961 [hereinafter referred to as 'the Act'] on 13/09/2007 asking the assessee to file return of income on or before 26/09/2007. However, assessee had not complied with the said notice. Therefore, the AO had proceeded to make ex-parte assessment u/s 144 of the Act assessing the entire consideration as deemed income u/s 69 of the Act.

4. Being aggrieved, assessee filed an appeal before the CIT(A) contending *inter alia* that the property which was sold does not belong to the assessee but to the HUF of father of the assessee, as the property was inherited from his grand-father's HUF. It was further contended without prejudice to this that the share of the assessee's father's HUF is only Rs.8,99,900/- and therefore entire amount cannot be assessed in his hands and also a claim was made for exemption u/s 54F as an amount of Rs.8,99,900/- was stated to have been invested in construction of residential property. The CIT(A), after considering the remand report submitted by the AO, confirmed the addition only to the extent of Rs.8,99,900/-. The relevant paragraph is extracted below:

7.2. The assessee's contention that the transaction is only attributable to his father HUF and not him as an individual is not supported by the returns of income that ought to have been filed to justify such a claim. The assessee's contention would have been acceptable only in the event a proper return of income was filed by Sri Venkatesh (assessee's father) as Karta of the HUF, duly reflecting the consideration received, on account of the sale under reference; and exemptions, if any claimed thereof.

The assessee has not filed copies of any such return of income either before the AO or during the present appellate proceedings. The AO on the contrary, in his remand report has categorically stated that no return of income in HUF or even in individual capacity have been filed by either the HUF or the individual under reference.

In the facts and circumstances, the appellant cannot be absolved from the capital gains liability arising on account of receipt of such consideration to the extent of receipt of Rs. 8,99,900/- on sale consideration.

5. Being aggrieved, the appellant is before us in the present appeal. The written submissions filed by the learned AR of the assessee read as under:

1. The Appellant submits that his Grandfather Late. Nanjunda Reddy had owned ancestral property measuring 2 Acres 28 Guntas situated in Sy. No. 76/1, Nallurahalli Village, K. R Puram Hobli, Bangalore. The said Nanjunda Reddy got the aforesaid land through a partition for which mutation entries were passed in his name wide IHC.2/8283.
2. The Appellant submits that Late. Najunda Reddy had Six sons namely:-
 - i. Hanuma Reddy
 - ii. Venkatesh
 - iii. Rajappa Reddy
 - iv. Gopal Reddy
 - v. Kumar
 - vi. Ravindra.
3. On death of Najunda Reddy the aforesaid property measuring 2 Acres 28 Guntas was succeeded by his Six Sons named above. The Legal Heirs of Late. Nanjunda Reddy became the absolute owners of the aforesaid property and the mutation entries were passed in favour of the brothers named above vide IHC.13/9495.

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4. The Six Sons of Late. Nanjunda Reddy and their Children have jointly sold the aforesaid property in favour of Mr. C. Bhaskaran for a Total Sale Consideration of Rs. 59,37,500/- through a registered Sale Deed dt: 23-11-2004.
5. The Appellant is the son of Sri. Venkatesh who is one of the Six sons of Late. Nanjunda Reddy. Accordingly Sri. Venkatesh the Appellant's father was entitled to his Share of Consideration amounting to Rs. 6,74,925/- as mentioned on page 6 of the Sale Deed dt: 23-11-2004. The Appellant submits that the said sum of Rs. 6,74,925/- belongs to his father Venkatesh, his brother Sri. Prasanna and to himself. Accordingly the Appellant at best is entitled to 1/3rd of Sale Consideration of Rs. 6,74,925/- which amounts to Rs. 2,24,984/-. The Appellant submits that apart from Rs. 6,74,925/- his minor Sister Kumari. Aruna was also paid a sum of Rs. 2,24,975/-. Thus the Appellant's family consisting of himself (Appellant), his father (Venkatesh), his brother (Prasanna) and his minor sister (Miss. Aruna) received total sale consideration of Rs. 8,99,900/-.
6. The Appellant submits that a Return of Income was not filed by his father since he has intended to Re-invest the entire Sale Consideration in construction of a New Residential House and therefore the amount was also not deposited.
6. Thus, learned AR of the assessee submitted that the sale consideration received of Rs.8,99,900/- belonged to HUF of his father and therefore, cannot be assessed in his hands. He has signed the Sale Deed only as a confirming party. He further submitted that, in any event, the assessee's father had brought vacant site bearing No.73, Nalurhalli Village, Krishnarajapura Hobli, Bangalore East, which is eligible for exemption u/s 54F of the Act. Thus, he prayed that the amount is not taxable in the individual capacity. Therefore, the addition

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should be deleted. He further submitted that even assuming that said amount is taxable in the hands of HUF of his father, no capital gains arose since sale proceeds have been invested in the construction of new house and the same are exempt from tax. Therefore, no return of income was filed.

7. On the other hand, learned departmental representative relied on the orders of the lower authorities.

8. We heard rival submissions and perused material on record. The only issue in the present appeal sale consideration of Rs.8,99,900/- received on account of sale of property situated at Nallurahalli Village, K.R.Puram Hobli, Bangalore East is taxable in the hands of the appellant. On perusal of the recitals to the Sale Deed, it is clear that this property was originally owned by one Mr Venkataramanappa who was the absolute owner of the property situated at Sy.No.76/1, Nallurhalli village, KR Puram Hobli, Bangalore East. After death of Shri Venkataramanappa, his son Chikkaramaiah became absolute owner. On the demise of Chikkaramaiah, through a partition deed, between two sons viz., Nanjunda Reddy and Gur Reddy, in terms of which this property has fallen to the share of late Nanjunda Reddy, and accordingly mutation entries were passed in the name of late Nanjunda Reddy. On the death of late Nanjunda Reddy, his six sons viz., S/Shri (i) Hanuma Reddy, (ii) Venkatesh (iii) Rajappa Reddy (iv) Gopal Reddy (v) Kumar Reddy and (vi) Ravindra Reddy became owners of the property and accordingly mutatin entries were made. These six sons of late Nanjunda Reddy jointly sold this property for a consideration of Rs.59,37,500/- vide registered sale deed dated 23/11/2004 in favour of one Bhaskaran. The appellant is the son of Venkatesh who is the son of one of the 6 sons of late Nanjunda Reddy. Thus there is no evidence on record to show that the appellant is the absolute owner of the property sold. However, his name was found as one of the sellers in the sale deed vide serial No.5. It does not mean that he has an interest or absolute owner of this property. There is merit in the submission made by the learned AR of the assessee that the appellant was made a party to the sale deed

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as a confirming party. There is no evidence brought on record to show that there is partition among Venkataramanappa and his sons. In the circumstances, this amount cannot be taxed in the hands of the assessee. It is a settled proposition of law held by the Hon'ble Supreme Court in the case of *ITO vs. Ch.Atchiaiah* (218 ITR 239)(SC) that right amount should be taxed in the right hands only Therefore, we hold that this amount cannot be taxed in the hands of the appellant. Hence, the appeal filed by the assessee is allowed.

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

Order pronounced in the open court on 22nd November, 2017

sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Place: Bengaluru
Date : 22/11/2017

srinivasulu, sps

Copy to :

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

By order

Senior Private Secretary
Income-tax Appellate Tribunal
Bangalore