

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA Nos.2909 to 2911/Bang/2017
Assessment Years :2006-07 to 2008-09

Shri K.S. Gundappa Shetty (HUF), Anjaneya Temple Street, Uttarahalli, Subramanyapura Post, Bangalore – 560 061. PAN: AADHG2727B	Vs.	The Income Tax Officer, Ward – 10 (2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Chandrasekhar, Advocate
Respondent by	:	Shri L.V. Bhaskar Reddy, Addl. CIT (DR)

Date of hearing	:	22.03.2018
Date of Pronouncement	:	22.03.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

All these three appeals are filed by the assessee which are directed against three separate orders of Id. CIT(A)-3, Bangalore all dated 27.10.2017 for Assessment Years 2006-07, 2007-08 and 2008-09.

2. The grounds raised by the assessee for Assessment Year 2006-07 in ITA No. 2909/Bang/2017 are as under.

“1. The order of the learned authorities below in so far as it is against the Appellant, is opposed to law, weight of evidence, natural justice, probabilities on facts and circumstances of case.

2. The learned Commissioner of Income-tax [Appeals] is not justified in dismissing the appeal preferred by the appellant by holding that the appellant HUF cannot challenge the order passed by the learned assessing officer in the case of Individual, without appreciating that the appellant HUF was an aggrieved person having regard to the assessment of the income belonging to the appellant HUF, in the hands of the Sri. K.S. Gundappa Shetty, Individual capacity and hence the appellant had a vested right to file an appeal as per the provisions of section 246A[1] of the Act, on the facts and circumstances of the

case.

3. *The learned Commissioner of Income-tax [Appeals] and the learned Assessing officer ought to have appreciated that the said transactions of the AOP has been offered by the appellant in its return of income in the status of HUF, on the facts and circumstances of the case.*

4. *The learned authorities below failed to appreciate that the transactions of AOP in which the appellant HUF was one of the member is the investment by the appellant HUF and treating the transaction of AOP and bringing to tax in the hands of Sri. K.S. Gundappa Shetty [Individual] is uncalled for and the order passed by the learned authorities is bad in law. Further, the learned authorities below were not justified in bringing the said transaction into the tax ambit in the individual capacity of Sri. K.S. Gundappa Shetty as the same is assessed in the wrong status which requires to be cancelled, on the facts and circumstances of the case.*

5. *Without prejudice the learned Commissioner of Income-tax [Appeals] is not justified in not adjudicating all the grounds raised by the appellant which is in grave violation of principles of natural justice on the facts and circumstances of the case.*

6. *Without prejudice the learned assessing officer is not justified in adding a sum of Rs. 7,51,226/- as short-term capital gains from sale of sites by the AOP, on the facts and circumstances of the case.*

7. *Without prejudice the learned authorities are not justified in not allowing the appellant's share of developmental expenditure incurred by the AOP for the purpose of formation of residential layout, on the facts and circumstances of the case.*

8. *The learned authorities below failed to appreciate that the appellant HUF has disclosed the profit from the transactions from the AOP in its return and consequently the re-opening in the individual status of Sri. K.S. Gundappa Shetty is bad in law, on the facts and circumstances of the case.*

9. *The Appellant craves leave of this Hon'ble Tribunal to add, alter, amend, modify, delete or substitute any of the grounds urged above.*

10. *In view of the above and other grounds as may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity."*

3. The grounds raised by the assessee for Assessment Year 2007-08 in ITA No. 2910/Bang/2017 are as under.

“1. The order of the learned authorities below in so far as it is against the Appellant, is opposed to law, weight of evidence, natural justice, probabilities on facts and circumstances of case.

2. The learned Commissioner of Income-tax [Appeals] is not justified in dismissing the appeal preferred by the appellant by holding that the appellant HUF cannot challenge the order passed by the learned assessing officer in the case of Individual, without appreciating that the appellant HUF was an aggrieved person having regard to the assessment of the income belonging to the appellant HUF, in the hands of the Sri. K.S. Gundappa Shetty, Individual capacity and hence the appellant had a vested right to file an appeal as per the provisions of section 246A[1] of the Act, on the facts and circumstances of the case.

3. The learned Commissioner of Income-tax [Appeals] and the learned Assessing officer ought to have appreciated that the said transactions of the AOP has been offered by the appellant in its return of income in the status of HUF, on the facts and circumstances of the case.

4. The learned authorities below failed to appreciate that the transactions of AOP in which the appellant HUF was one of the member is the investment by the appellant HUF and treating the transaction of AOP and bringing to tax in the hands of Sri. K.S. Gundappa Shetty [Individual] is uncalled for and the order passed by the learned authorities is bad in law. Further, the learned authorities below were not justified in bringing the said transaction into the tax ambit in the individual capacity of Sri. K.S. Gundappa Shetty as the same is assessed in the wrong status which requires to be cancelled, on the facts and circumstances of the case.

5. Without prejudice the learned Commissioner of Income-tax [Appeals] is not justified in not adjudicating all the grounds raised by the appellant which is in grave violation of principles of natural justice on the facts and circumstances of the case.

6. Without prejudice the learned assessing officer is not justified in adding a sum of Rs. 22,75,757/- as short-term capital gains from sale of sites by the AOP, on the facts and circumstances of the case.

7. Without prejudice the learned authorities are not justified in not allowing the appellant's share of developmental expenditure incurred by the AOP for the purpose of formation of residential layout, on the facts and circumstances of the case.

8. The learned authorities below failed to appreciate that the appellant HUF has disclosed the profit from the transactions from the AOP in its return and consequently the re-opening in the individual

status of Sri. K.S. Gundappa Shetty is bad in law, on the facts and circumstances of the case.

9. The Appellant craves leave of this Hon'ble Tribunal to add, alter, amend, modify, delete or substitute any of the grounds urged above.

10. In view of the above and other grounds as may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”

4. The grounds raised by the assessee for Assessment Year 2008-09 in ITA No. 2911/Bang/2017 are as under.

“1. The order of the learned authorities below in so far as it is against the Appellant, is opposed to law, weight of evidence, natural justice, probabilities on facts and circumstances of case.

2. The learned Commissioner of Income-tax [Appeals] is not justified in dismissing the appeal preferred by the appellant by holding that the appellant HUF cannot challenge the order passed by the learned assessing officer in the case of Individual, without appreciating that the appellant HUF was an aggrieved person having regard to the assessment of the income belonging to the appellant HUF, in the hands of the Sri. K.S. Gundappa Shetty, Individual capacity and hence the appellant had a vested right to file an appeal as per the provisions of section 246A[1] of the Act, on the facts and circumstances of the case.

3. The learned Commissioner of Income-tax [Appeals] and the learned Assessing officer ought to have appreciated that the said transactions of the AOP has been offered by the appellant in its return of income in the status of HUF, on the facts and circumstances of the case.

4. The learned authorities below failed to appreciate that the transactions of AOP in which the appellant HUF was one of the member is the investment by the appellant HUF and treating the transaction of AOP and bringing to tax in the hands of Sri. K.S. Gundappa Shetty [Individual] is uncalled for and the order passed by the learned authorities is bad in law. Further, the learned authorities below were not justified in bringing the said transaction into the tax ambit in the individual capacity of Sri. K.S. Gundappa Shetty as the same is assessed in the wrong status which requires to be cancelled, on the facts and circumstances of the case.

5. Without prejudice the learned Commissioner of Income-tax [Appeals] is not justified in not adjudicating all the grounds raised by the appellant which is in grave violation of principles of natural justice on the facts and circumstances of the case.

6. Without prejudice the learned assessing officer is not justified in adding a sum of Rs. 7,36,466/- as short-term capital gains from sale

of sites by the AOP, on the facts and circumstances of the case.

7. Without prejudice the learned authorities are not justified in not allowing the appellant's share of developmental expenditure incurred by the AOP for the purpose of formation of residential layout, on the facts and circumstances of the case.

8. The learned authorities below failed to appreciate that the appellant HUF has disclosed the profit from the transactions from the AOP in its return and consequently the re-opening in the individual status of Sri. K.S. Gundappa Shetty is bad in law, on the facts and circumstances of the case.

9. The Appellant craves leave of this Hon'ble Tribunal to add, alter, amend, modify, delete or substitute any of the grounds urged above.

10. In view of the above and other grounds as may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”

5. The Id. AR of assessee submitted that Id. CIT(A) has dismissed these three appeals of assessee by holding that assessee HUF cannot challenge the order passed by the AO in the case of individual without appreciating that the assessee HUF is aggrieved because of the assessment of income belonging to it in the hands of Shri Gundappa Shetty individual. At this juncture, the bench observed that how HUF can be aggrieved against any addition made by the AO in the hands of any individual. In reply, the Id. AR of assessee could not satisfy as to how the assessee HUF is an aggrieved person against the assessment order passed in the hands of the HUF. Hence I hold that in the facts of the present case, no interference is called for in the three impugned orders of CIT(A).

6. In the result, all the three appeals filed by the assessee are dismissed.
Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 22nd March, 2018.
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.