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

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI N.S. SAINI, ACCOUNTANT MEMBER

ITA No. 2895/DEL/2017 [A.Y. 2012-13]

Shri Satish Kumar Tyagi, S/o Sh. Ved Prakash,] 47, Bhangel Begumpur, Gegha, Phase-II, Noida District Gautambudh Nagar, UTTAR PRADESH PAN : AAXPT1416A)	VS.	ITO, WARD 3(3), NOIDA
[Appellant]		[Respondent]

Assessee by : Shri K.P. Garg, CA
Revenue by : Shri S.S. Rana, CIT(DR)

ORDER

PER H.S. SIDHU, JM

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 2012-13.

2. The assessee has raised the following grounds of appeal:

"1. That the learned Commissioner of Income tax (Appeals) has erred in confirming the order of the AO by treating the interest income of the (HUF) Satish Tyagi to that of the individual Satish Tyagi.

2. That Ld. CIT(A) has erred in confirming the action of the AO in not accepting the fact that on account of death of Sh. Ved Prakash in 1954 a new HUF came into existence that of his son Satish Kumar and the interest on delayed payment of compensation of Ved Prakash Tyagi (HUF) was released / distributed / paid to the

smaller HUF (Coparcenaries).

3. That the learned CIT(A) has erred in law and on facts in confirming the AO's order to assess the benefit derived from the acquisition of ancestral land in the hands of Satish Kumar (Individual) and not in the hands of Satish Kumar (HUF) separately.

4. That the Learned Commissioner of Income tax (Appeals) has erred in law and on facts in dismissing the claim of HUF, merely on the ground that the Ved Prakash (HUF) in whose name the compensation on account of acquisition of family Agriculture land was released by the State Government has never filed its Income tax Return, ignoring the fact that the Agricultural Income was not liable to tax under section 10(37) of I.T. Act, 1961 and the family had no other income at that time.

5. That the learned CIT(A) has erred in law and on facts in confirming the AO's order in not accepting that each and every member born in Joint Hindu Family acquires an interest in HUF - (Sunil Kumar v. Ram Prakash- AIR 1988 SC 576) and Property inherited by Hindu from his father, father's father or father's father's father, is ancestral property- U.R.Virupakshaiah vs Sarvamma & Anr on Civil Appeal N0.7346 of 2008 (Arising out of SLP© N0.11785 of 2007)

6. That the learned Commissioner of Income tax (Appeals) has erred in law and on facts in not accepting that the impugned Agriculture land was ancestral coparcenary property passed on from Shri Ghisa to the joint family of Shri Fateh Singh(Son), Shri Ved Prakash (Grand Son) and Shri Satish Kumar (Great Grand son).

7. That the learned CIT(A) has erred in law and on facts in

considering that the interest income has been earned by the assessee (Individual) as per Form No.26AS on the record of the AO whereby TDS amounting to Rs4,40,595/- has been shown to have been deducted ignoring the submission of the assessee that since there was no PAN allotted in the name of Satish Kumar (HUF) the interest income was credited and TDS was deducted using the PAN of Satish Kumar (Individual), however, the interest income belonged to HUF and not to Individual.

8. That the Id. CIT (A) has erred in confirming the action of the AO in not considering the fact that after the death of the sole member so long as the original property of the Joint Family remains in the hands of widow of the members of the family and the same is not divided amongst them; the Joint Hindu family continues to exist. CIT vs. Veerapa Chettiar, 76 ITR 467 (SC)

9. That the learned CIT (A) has erred in confirming the action of the AO without appreciating the fact that the Bhumidhar rights created under section 18 of UP Zamindari Abolition and Land Reforms Act were the new rights of the deceased's son in the agriculture land would depend upon whether he was born before the date on which the UP Zamindari Abolition and Land Reforms Act became applicable to the area where the concerned land was situated. Therefore, in case the son was born before the vesting, he being the son of the deceased would before that date acquires an interest by birth in the agriculture holding of the HUF, but in case he was born after that date, he could not acquire any interest in the bhumidhari land of the deceased by birth. (Controller of Estate Duty vs. Smt. Shiela Prasad (143 ITR 458)(All)

10. That the learned C1T (A) has erred in law and on facts in ignoring section 37 of UP Zamindari Abolition and Land Reforms Act

which clearly provides for treating the Joint Family as a separate unit.

11. That the learned CIT(A) has erred in law and on facts in ignoring 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 agriculture income and not liable to tax, no such order can be passed u/s 171 of the Act."

3. The brief facts of the case are that assessee filed return of income on 18.3.2013 declaring total income of Rs. 3,41,320/- showing income under the head 'income from house property'. The case was selected for scrutiny through CASS. Notice under section 143(2) of the Act was issued on 23.9.2013. In response to the same, the AR of the assessee attended the proceedings and filed the replies. AO observed that assessee has declared income from house property only, whereas per 26AS statement the assessee was in receipt of interest amounting to Rs. 48,54,476.79 from Treasury, PNB and Syndicate Bank on which there was TDS of Rs. 4,86,990/-. Neither this income was shown in the return of income, nor claimed credit of TDS. AO issued notices u/s. 142(1) of the Act on 29.12.2014 and 9.1.2015 requiring to furnish details of income from all sources, and details of compensation and interest received thereon during the relevant assessment year and also required to explain why the interest income be not included towards assessee's total income under the head 'income from other sources.' The assessee vide his letter dated 8.1.2015 submitted that the ancestral agricultural land situated in village

Bhangel Noida was acquired by New Okhla Industrial Development Authority (NOIDA) in 1989, and the compensation was awarded was invested in various assets. It was further claimed that since the land was ancestral which was acquired by the assessee as Karta of the HUF namely Sh. Satish Kumar Tyagi & Others (HUF) after the death of his father Sh. Ved Prakash Tyagi in 1954. The land belonged to the assessee's HUF, and therefore, the compensation and interest received on acquisition of land by the Govt. belonged to the assessee's HUF. The issue was adjudicated by the Jt. Commissioner of Income Tax, Range-3, Noida during the course of assessment under section 144A of the I.T. Act, 1961 by passing the order dated 23.2.2015 and held that AO is directed to assess the benefits derived from the acquisition of said ancestral land in the hands of Sh. Satish Kumar Tyagi (Individual), and not in the hands of Shri Satish Kumar Tyagi and others (HUF), as offered. After receipt of the order dated 23.2.2015 the assessee was provided an opportunity of being heard vide notice u/s. 143(3) of the Act and in response to the same, the assessee filed his written submission vide letter dated 27.2.2015 and after considering the same, the AO held that the receipt of interest received is being considered and taxed in the hands of Sh. Satish Kumar Tyagi (individual) under the head 'income from other sources' and interest received on compensation at Rs. 70,37,239/- was added to the income of the assessee under the head income from other sources and income under the head 'capital gains' (long-term) works out at Rs. 15,41,886/- and added to the income of the assessee and also interest from bank at

Rs. 5,65,142/- was added to the income of the assessee under the head 'income from other sources' thus, computed the income of the assessee at Rs. 59,66,968/- u/s. 143(3) of the Act read with section 144A of the Act vide order dated 10.3.2015.

4. Against the order of the Assessing Officer, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 24.2.2017 has dismissed the appeal of the assessee by holding that that joint Hindu Property does not devolve on HUF by succession as is being sought to be made out on behalf of the appellant. The corpus of the HUF is to be specifically created and only with the creation of corpus an HUF comes into being. He further held that the assessee has not brought no evidence to even suggest that the corpus of the Satish Kumar, HUF was ever created nor any evidence has been brought on record to show that the said Satish Kumar, HUF was in subsistence and had come to acquire the land which was acquired by the State and which has been subjected to tax by the AO in the impugned assessment order and finally held that the claim of the assessee regarding creation of subsistence of the Satish Kumar, HUF, is not maintainable and the same was rejected.

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

6. Ld. counsel for the assessee has submitted that the ancestral agricultural land situated at village Bhangel of Noida belonging to Shri Ved Prakash Tyagi & Others (HUF) was acquired by the NOIDA in 1989 and the compensation was awarded which was invested in various assets. In

the year 1954 Shri Ved Prakash Tyagi died and Shri Satish Kumar Tyagi became the karta of the HUF namely Shri Satish Kumar Tyagi & others (HUF) having the other co-parceners, namely Smt. Mithlesh Tyagi (wife) and Shri Varun Tyagi (son). No income tax return was filed by Shri Ved Prakash Tyagi and others (HUF) for the AY 1990-91 as the income, being agricultural was exempt u/s 10(37) of the IT Act 1961. The above smaller HUF namely Shri Satish Kumar Tyagi HUF received interest on delayed payment of compensation payable to Shri Ved Prakash Tyagi & others (HUF) amounting to Rs.65,96,644 + TDS Rs.4,40,595/-) = 70,37,239/-, along with two hufs of his brothers, Shri Navin Kumar Tyagi and Shri Ashwani Kumar Tyagi. He submitted that there was a misconception in the mind of the assessee (similar to that of his brothers) who is a villager and illiterate that this interest on delayed payment of compensation has been paid as a result of acquisition of agriculture land on which no income tax is chargeable, hence neither income tax return was filed nor any PAN was got allotted by the above three HUFs. It was further submitted that later this misconception had been broken and it has been realised that the HUFs should have filed their income tax returns separately for the financial year relevant to the AY 2012-13. Accordingly return of the HUF was filed under IDS and tax paid, which has been accepted by the Id. Pr. CIT, Noida in all the three cases. (Evidence of the current assessee enclosed herein). The interest granted on delayed payment of compensation was released in the individual names as there was no PAN available/allotted in the status of HUF having no other income

except agricultural income and also there was no bank account in HUF status, as in the other two cases. He further submitted that the ITO assessed this income in the hands of Shri Satish Kumar Tyagi, individual as in the cases of his brothers Shri Navin Kumar Tyagi and Shri Ashwani Kumar Tyagi. The assessee herein filed appeal before CIT(A)-1 Noida, who dismissed the appeal on the same grounds as in the case of Shri Navin Kumar Tyagi. Accordingly the assessee filed appeal with ITAT. It was submitted that the only issue in all these three appeals is whether the income of the HUF could be taxed in the hands of the individual, which has been settled by ITAT in the case of Shri Ashwani Kumar Tyagi and followed in the case of Navin Kumar Tyagi. It was further submitted that the ITAT in appeal no.2745/DEL/2017, order dated 18-10-2017 in the case of Shri Ashwani Kumar held: that this income is taxable in the hands of respective HUF only and further confirming that the respective HUFs have already paid the taxes under IDS, since it was not paid earlier. The declaration under IDS has been accepted without dispute. Hence the ITAT deleted the addition in the hands of the individual and upheld the claim of the assessee that income from interest on delayed compensation is taxable only in the hands of respective HUF. Hence, he stated that the issue in dispute is squarely covered by the ITAT decision in the case of Shri Ashwani Kumar Tyagi in appeal no.2745/DEL/2017 for AY 2012-13 (Supra) and requested to follow the same and appeal of the assessee may be allowed.

6.1 The assessee filed the Paper Book containing pages 1 to 32 in which he has attached the copy of PAN of Satish Kumar; Form 1 – declaration u/s. 183 in respect of Income declaration Scheme 2016 of Satish Kumar Tyagi HUF alongwith Annexure; Form 2 in respet of income declaration scheme 2016, HUF, Form 4 in respet of income declaration scheme 2016, HUF; copyo f challans for payment of tax under IDS by the HUF for AY 2017-18 for Rs. 3,96,000/- two nos. Rs. 4,00,000/- 1 no. and Rs. 3,92,000/-; ITAT E Bench New Delhi order dated 8.3.2018 in the case of Sh. Naveen Kumar Tyagi for AY 2012-13; ITAT, New Delhi – SMC Bench order dated 18.10.2017 in the case of Sh. Ashwani Kumar Tyagi for AY 2012-13 and the copy of written synopsis. He further submitted that the issue involved in the present appeal is squarely covered by the decision of the SMC Bench order dated 18.10.2017 in the case of Sh. Ashwani Kumar Tyagi for AY 2012-13 and the ITAT E Bench New Delhi order dated 8.3.2018 in the case of Sh. Naveen Kumar Tyagi for AY 2012-13.

7. Ld. CIT(DR) relied upon the orders of the authorities below.

8. We have heard both the parties and perused the records, especially the order of the authorities below as well as Paper Book containing pages 1 to 32 and the decision of the ITAT E Bench New Delhi order dated 8.3.2018 in the case of Sh. Naveen Kumar Tyagi for AY 2012-13; ITAT, New Delhi and SMC Bench order dated 18.10.2017 in the case of Sh. Ashwani Kumar Tyagi for AY 2012-13. We find that the issue in dispute is squarely covered by the decision of the ITAT, SMC Bench dated 18.10.2017 in the case of Sh.

Ashwani Kumar Tyagi vs. ITO, Noida in ITA No. 2745/Del/2017 (AY 2012-13). For the sake of convenience, we are reproducing the relevant finding of the Tribunal's order dated 18.10.2017 as under:-

> *"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."

8.1 Keeping in view of the facts and circumstances of the case as well as the order passed by the Coordinate Bench dated 18.10.2017 in the case of Sh. Ashwani Kumar Tyagi vs. ITO, Noida in ITA No. 2745/Del/2017 (AY 2012-13) as reproduced above, we are of the view that the issue in dispute is squarely covered by the aforesaid decision dated 18.10.2017 in the case of Ashwani Kumar Tyagi (Supra) which has been decided in favour of the assessee. Therefore, respectfully following the order dated 18.10.2017 in the case of Sh. Ashwani Kumar Tyagi (Supra), we delete the addition in dispute and allow the appeal of the assessee.

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

This Order is pronounced on 18-12-2018.

Sd/- **Sd/-**

(N.S. SAINI) **(H.S. SIDHU)**
Accountant Member **Judicial Member**

Dated: 18-12-2018.
SRBHATNAGAR
Copy forwarded to
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi