

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES “ A ” BENCH: BANGALORE

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

Sl. No.	ITA No. & Asst. Year	Appellant	Respondent
1.	1149/Bang/2008 2000-01	Smt.Subbalakshmi, No.24, Anjanamurthy Building, Lottegollahalli, RMV II Stage, Bangalore.	Asst. Commissioner of Income Tax, Central Circle 1(2), Bangalore.
2.	1153/Bang/2008 2000-01	-do-	-do-
3.	1154/Bang/2008 2005-06	-do-	-do-
4.	1156/Bang/2008 2000-01	Shri Ashok Kumar, Lottegollahalli, RMV II Stage, Bangalore.	Asst. Commissioner of Income Tax, Central Circle 1(2), Bangalore.
5.	1160/Bang/2008 2004-05	-do-	-do-
6.	1161/Bang/2008 2005-06	-do-	-do-
7.	1163/Bang/2008 2000-01	Shri Arvind Kumar, Lottegollahalli, RMV II Stage, Bangalore.	Asst. Commissioner of Income Tax, Central Circle 1(2), Bangalore.
8.	1167/Bang/2008 2004-05	-do-	-do-
9.	1168/Bang/2008 2005-06	-do-	-do-
10 to 15.	777 to 782/Bang/2011 (2000-01 to 2005-06)	Shri Ashok Kumar, (Karta of Erstwhile HUF of Late Sri Anjanamurthy) Lottegollahalli, RMV II Stage, Bangalore.	Asst. Commissioner of Income Tax, Central Circle 1(2), Bangalore.

Assessee By:	Shri V. Srinivasan, Advocate.
Revenue By:	Shri Dilip, Junior to Shri K.V. Arvind, Advocate, Standing Counsel for Dept.

Date of Hearing :	25.11.2019
Date of Pronouncement :	17.12.2019

## **ORDER**

### **PER BENCH :**

The Hon'ble High Court of Karnataka, Bangalore on 12.09.2011 passed orders in assessee's substantive assessments which are as under :

Sl. No.	High Court Order No.	Name of the assessee	Assessment Year	ITA No. & Date.
1.	42 of 2010	Smt. Subbalakshmi	2004-05	1153/Bang/2008 Dt.4.9.2009
2.	38 of 2010	-do-	2000-01	1149/Bang/2008 Dt.4.9.2009
3.	43 of 2010	-do-	2005-06	1154/Bang/2008 Dt.4.9.2009
4.	45 of 2010	Shri Ashok Kumar	2000-01	1156/Bang/2008 Dt.4.9.2009
5.	49 of 2010	-do-	2004-05	1160/Bang/2008 Dt.4.9.2009
6.	50 of 2010	-do-	2005-06	1161/Bang/2008 Dt.4.9.2009
7.	51 of 2010	Shri Arvind Kumar	2000-01	1163/Bang/2008 Dt.4.9.2009
8.	56 of 2010	-do-	2004-05	1167/Bang/2008 Dt.4.9.2009
9.	57 of 2010	-do-	2005-06	1168/Bang/2008 Dt.4.9.2009

2. The Hon'ble High Court of Karnataka after hearing both the counsels on the substantive assessments of assessee has passed judgement on the Joint family properties and we consider it proper to refer to the observations of Hon'ble High Court and the specific directions as held at pages 21 to 24 para 12 as under :

12. In so far as the case on merits is concerned, it is an undisputed fact that all these properties were joint family properties, at a particular point of time. However, the joint family itself was not assessed to tax and as rightly held by the authorities, Section 171 is not attracted. The law recognizes oral partition. Therefore, if, in a oral partition dated 10.02.1996 and 01.12.1999, if the properties have fallen to the share of members of the family, from the date of such partition, it becomes their absolute property and if they have sold that property thereafter, it is they who had to pay capital gains. The said properties cannot be treated as Hindu Undivided Family. It is on record that the said partition is also the subject matter of civil litigation, as all the authorities have not accepted the same. Under these circumstances, what is to be seen is, on the dates of oral partition which are not in dispute, what are the properties

partition which are not in dispute, what are the properties which has fallen to the share of the members, how that properties has been held by them subsequent to the partition ~~and after such partition, whether any properties remained in~~ Hindu Undivided Family and before the final partition which is reduced into writing on 01.11.2005, whether those properties

are sold or those properties are sold after the final partition and in the final partition, who are the persons who got properties, are the matters which has to be ascertained by looking into the sale deeds and other documents on which the parties rely on. If the Tribunal can look into those documents and pass orders on merits, that would be the best thing to do. But if for any reason, the Tribunal is unable to take up that exercise for want of sufficient material, then it may have to remand the matter to the Assessing Authority. It is not proper for the Tribunal to remand the matter without attempting to settle the matter at the stage of Tribunal. In that view of the matter, we pass the following order:

- (i) **Appeals are partly allowed.**
- (ii) *The Cross Appeals are allowed in full.*
- (iii) *The order passed by the Tribunal in all these cases is hereby set aside.*
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- (iv) *The entire matter is remanded back to the Tribunal for fresh consideration.*
- (v) *All the contentions that are urged both on the ground of jurisdiction as well as on merits, are kept open to be agitated before the Tribunal.*
- (vi) *Parties to bear their own costs.*

Sri M.V. Sheshachala, learned Counsel is permitted to file memo of appearance in Cross Appeals, within four weeks.

Based on the directions of Hon'ble High Court of Karnataka the matter was heard and learned Standing Counsel of Department supported the Hon'ble High Court decision and the learned Authorised Representative made elaborate submissions on facts and substantive assessments and also filed written submissions along with material papers which are as under :

1. “ The captioned 9 appeals are filed by the 3 appellant Individuals for the assessment years 2000-01, 2004-05 and 2005-06 challenging the assessments made and upheld by the authorities below. These appeals were initially disposed off by the Hon'ble Tribunal vide order dated 14/09/2009. On further appeals filed by the appellant as well as the Respondent before the Hon'ble High Court, these appeals have been restored by the Hon'ble High Court of Karnataka vide judgement dated 12/09/2011 for fresh consideration.

2. **FACTS:** The appellant Smt. Subbalakshmi is the second wife of one late Sri Anjanamurthy. The appellants Sri Ashok Kumar and Sri Arvind Kumar are the sons of the aforesaid Smt.Subbalakshmi and late Sri Anjanamurthy. In the impugned assessments framed for the assessment years for consideration, the authorities below have assessed the following incomes equally i.e., 1/3<sup>rd</sup> each in their respective hands :

Sl. No.	Particulars of Income assessed	Assessment years		
		2000-01	2004-05	2005-06
1.	Rental Income from 33 dwelling units [Admitted by the appellants as belonging to them in individual capacity following the oral partial partition on 01/12/1999]	96,000*	99,237	89,600**
2.	Long term capital gains on sale of 2 sites in Sy.No.2-2/2	1,32,200	--	--
3.	Long term capital gains on sale of site No.1A in Sy.No.2/2	--	1,76,995	--
4.	Long term capital gains on sale of land in Sy.No.2/4 & 2/3A	--	--	1,40,27,840
5.	Unexplained Cash Credits in the bank account	--	1,08,333	93,333
6.	Interest on FD	50,075	--	--
7.	Other Income	--	29,666	--

\* Income offered by the appellants was Rs. 20,290 each

\*\* Income offered by the appellants was Rs. 84,270 each

3. Before the learned A.O., the appellants had contended that the incomes that have been assessed in Sl.No.2 to 7 above did not relate to them in individual capacity and that the same belonged to the erstwhile HUF of late Sri Anjanamurthy, which got disrupted in terms of the final partition dated 01/11/2005. The appellants explained that the income derived from the 33 dwelling units alone was assessable in their hands in individual capacity since these 33 dwelling units was subject matter of an oral partial partition on 01/12/1999 between them. Hence, the rental income was also offered in the returns of income filed for various assessment years. It was contended and explained by the appellants that all other properties that were originally belonging to Late Sri Anjanamurthy was ancestral in nature and these properties continued to remain as joint family property of the appellant herein until the final partition on 01/11/2005. Hence, the appellants contended that the capital gains and other income cannot be taxed in their respective hands.

4. The A.O. while passing the assessment orders in the case of the appellants had examined the aforesaid claim. The A.O. has also noticed that all the properties that were held by the appellant belonged to late Sri Anjanamurthy and they were HUF properties. The A.O. has also noted that the HUF of Late Sri Anjanamurthy did not exist anymore as it was finally partitioned. He has also noted that no assessment could be framed on the disrupted HUF and that section 171 of the Act was not applicable. However, the learned A.O. has taken the view that the properties of Sri Anjanamurthy was partitioned in the year 1999 and thereafter the income has to be assessed in individual capacity by making the following observations in page [8] of the assessment order for the AY 2001-02, which is typical for other years as well :

*“Accordingly as mentioned in the above mentioned para Sri Anjanmurthy HUF was partitioned in the year 1999 and income from property and other income being partitioned among member of HUF in their individual capacity according to Hindu law. “Therefore, partitioned income is assessed in Individual Capacity”.*

5. On first appeal, the learned CIT [Appeals] upheld the assessment of the disputed incomes in the individual capacity of the appellants by taking the view that there was no HUF as per the provisions of the Income-tax Act since, the erstwhile HUF of Sri Anjanamurthy had not filed any returns of income. According to the learned CIT[A] the HUF of Late Sri Anjanamurthy existed only in the eyes of Hindu Law and not for Income tax purposes. On this ground the assessment of incomes was upheld.

6. On further appeal by the appellants, the Hon’ble ITAT in the order dated 04/09/2009 had restored the matter back to the file of the A.O. by observing vide paras [39] & [40] as follows :

*”39. It was always the case of the assessee that there was an oral partial partition with regard to some family properties which were declared in their individual returns to the extent of 1/3<sup>rd</sup> share by all the three assesses. This irresistible leads to the conclusion that if any common property is left which was inherited by the coparceners, which was not divided partially or orally, such property continues to exist in the hands of HUF. In view of the above, we are of the view that the property which were not disclosed in their individual returns but which continued to enjoy the status of HUF, if sold and capital gains arose from such sale, such capital gains should be assessed in the hands of HUF if the sale took place prior to oral partial partition on 1.12.1999. If the sale took place after, and if any portion of the property the individuals received, such income should be assessed in their individual hands. After 1.12.1999 there was another oral partial partition either member/coparcener specific and property specific. Since both kinds of partition are valid according to Hindu law, the shares they received should be assessed in their individual hands. If the property which was sold was of that part that continued as HUF, since complete partition was done during 2005-06,*

*such part also should be assessed in the hands of HUF. On the other hand, if it was divided partly, then it should be assessed in the hands of the respective individuals.*

40. *The Assessing Officer while giving effect to the order shall see whether the property out of which the capital gain arose was sold prior to the oral partition or not. If it was prior to the partition, then it could be assessed in the hands of the HUF as for the remaining properties which were not declared as their individual properties, they continue to enjoy the status of HUF. If the portion that is sold was enjoyed by the assessee in her individual capacity after the oral partial partition claimed to be made on 1.12.1999. The Assessing Officer is directed accordingly”.*

7. On further appeal against the said order, the Hon’ble High Court in the judgement dated 12/09/2011 has observed vide para [12] as under :-

”12. *In so far as the case on merits is concerned, it is an undisputed fact that all these properties were joint family properties, at a particular point of time. However, the joint family itself was not assessed to tax and as rightly held by the authorities, Section 171 is not attracted. The law recognizes oral partition. Therefore, if, in a oral partition dated 10.02.1996 and 01.12.1999, if the properties have fallen to the share of the members of the family, from the date of such partition, it becomes their absolute property and if they have sold that property thereafter, it is they who had to pay capital gains. The said properties cannot be treated as Hindu Undivided Family. It is on record that the said partition is also the subject matter of civil litigation, as all the authorities have not accepted the same. Under these circumstances, what is to be seen is, on the dates of oral partition which are not in dispute, what are the properties which has fallen to the share of the members, how that properties has been held by them subsequent to the partition and after such partition, whether any properties remained in Hindu Undivided Family and before the final partition which is reduced into writing on 01.11.2005, whether those properties are sold or those properties are sold after the final partition and in the final partition, who are the persons who got properties are the matters which has to be ascertained by looking into the sale deeds and other documents on which the parties rely on. If the Tribunal can look into those documents and pass orders on merits that would be the best thing to do. But if for any reason, the Tribunal is unable to take up that exercise for want of sufficient materials, then it may have to remand the matter to the Assessing Authority. It is not proper for the Tribunal to remand the matter without attempting to settle the matter at the stage of Tribunal. In that view of the matter, we pass the following order :-*

(i) Appeals are partly allowed

- (ii) *The Cross Appeals are allowed in full*
- (iii) *The order passed by the Tribunal in all these cases is hereby set aside*
- (iv) *The entire matter is remanded back to the Tribunal for fresh consideration.*
- (v) *All the contentions that are urged both on the ground of jurisdiction as well as on merits, are kept open to be agitated before the Tribunal*
- (vi) *Parties to bear their own cost”*

8. **CONTENTIONS:** In light of the aforesaid judgement of the Hon'ble High Court it becomes clear that all properties that are held by the 3 appellants originally belonged to Sri Anjanamurthy [HUF] and they were joint family properties. It is also clear that the joint family of Sri Anjanamurthy [HUF] was not assessed and section 171 of the Act, has no application since the said joint family is not a hitherto assessed joint family. Furthermore, there were two oral partial partitions in the joint family on 10/02/1996 and 01/12/1999. The final partition of the joint family took place on 01/11/2005 and the same is reduced to writing and available on record. These aspects of the matter are not in dispute at all.

9. The Hon'ble High Court has also observed that there were civil disputes raised as to the ownership of the property and the same has also to be examined. Ultimately, the Hon'ble High Court has directed to examine whether the properties that were sold by the appellants were allotted to them in the oral partition on 10/02/1996 and 01/12/1999 or whether they continue to remain the properties of the Hindu Undivided Family.

10. This is the crux of the directions of the Hon'ble High Court that has to be undertaken by the Hon'ble Bench by examination of the documents produced to give a finding on whether the properties sold were belonging to the appellants in individual capacity or not.

11. **ORAL PARTITION DATED 10/02/1996:** It is the appellant's case that the oral partition on 10/02/1996 was between some of the members of the HUF and hence, it was a partial partition under which some members of the HUF were allotted certain properties and they ceased to be member of the HUF. At this stage, it may be mentioned that Sri Anjanamurthy was originally married to one Smt. Komala. There were 4 daughters born to the aforesaid Smt.Komala and Sri Anjanamurthy viz., Prameela, Latha, Anitha and Manjula. Smt. Komala passed away when the children were still young. After the death of Smt.Komala, Sri Anjanamurthy married the appellant Smt. Subbalakshmi and had two sons Ashok Kumar and Arvind Kumar, the other appellants herein and one daughter Smt. Ramya. The 4 daughters of late Sri Anjanamurthy from his first wife were married during the lifetime of Sri Anjanamurthy himself, who died on 21/02/1994. In the oral partition on 10/02/1996 the daughters of Sri Anjanamurthy through his first wife Smt.Komala, were given 1/8<sup>th</sup> share in 2 Acres of land belonging to the joint family and hence, they ceased to be

members of the HUF. Thereafter, the joint family of Late Sri Anjanamurthy continued to consist of the appellant Smt.Subbalakshmi, Ashok Kumar and Arvind Kumar besides Smt. Ramya.

12. **ORAL PARTITION DATED 01/12/1999:** The aforesaid joint family of Late Sri Anjanamurthy consisting of the appellant herein and Smt. Ramya continued to hold the remaining properties apart from the properties that were allotted to the 4 daughters of Late Anjanamurthy on 10/02/1996. On 01/12/1999, there was a second oral partition in the family and 33 dwelling units were partitioned amongst the remaining members of the joint family being the appellants. The rest of the properties continued to remain HUF properties of the appellants herein until the final partition on 01/11/2005. In the meanwhile Smt. Ramya got married on 16/02/2004 and she was given share in the family properties by registered gift deed of about 5 Acres of land in Devanahalli.

13. It is submitted that in the oral partition on 01/12/1999 except 33 dwelling units none of the other properties were partitioned and this can be established by the fact that in the final partition deed dated 01/11/2005 [placed at **pages 87 to 100 of the Paper book**], the amounts receivable on sale of properties from Anriya Project Management and from Sri Lakhan Singh, have been shown as belonging to the HUF and the same have been partitioned and allotted to the parties. These amounts are receivable on the sale of the properties in respect of which capital gains has been assessed. Hence, it is clear that these properties were not subject matter of the oral partition on 01/12/1999.

14. That apart, the learned A.O. has recorded a sworn statement from one of the appellants Sri Ashok Kumar on 03/10/2007 in course of the assessment proceedings [placed at **pages 24 to 31 and 101 to 102 of the Paper book**]. **It is clear from the statement made on oath that there were 2 oral partitions and the properties allotted therein have been clearly mentioned.** No material is brought on record to show that the statement on oath of Sri Ashok Kumar is not reliable.

15. As observed by the Hon'ble High Court, the appellant is also placing on record the details of the civil litigations in the family. It is submitted that two of the daughters of late Sri Anjanamurthy viz., Smt. Latha and Smt. Manjula, had filed a suit for partition and separate possession of their alleged share in properties belonging to Late Sri Anjanamurthy in Sy. No. 2/2. They filed the suit in OS No.223/2001 before the Court of the Hon'ble I Addl. City and Civil Session Judge, Bengaluru City, against the appellants herein. The pleadings in the said plaint are that there was no oral partition on 10/02/1996 and they were entitled to a share in the entire assets of late Sri Anjanamurthy. The said suit was initially dismissed on 23/11/2010. Copy of the judgement of the Hon'ble I Addl. City and Civil Session Judge dated 23/11/2010 dismissing the suit of the aforesaid plaintiffs is enclosed herewith as **Annexures-1**.

16. Thereupon, the aforesaid plaintiffs had filed a regular first appeal [RFA] before the Hon'ble High Court of Karnataka challenging the dismissal of the suit. The

Hon'ble High Court was pleased to remand the matter for fresh consideration to record findings as to whether the oral partition dated 10/02/1996 was proved by the defendants. Accordingly, the Hon'ble I Addl. City and Civil Session Judge has passed a judgement on 22/09/2016 holding that there was an oral partition on 10/02/1996 and the same was also acted upon by framing an additional issue in the said suit. Consequently, the suit filed by the said plaintiffs was once again dismissed. Copy of the judgement of the Hon'ble I Addl. City and Civil Session Judge dated 22/09/2016 is enclosed herewith as **Annexures 2**.

17. In light of the aforesaid judgement of the Hon'ble I Addl. City and Civil Session Judge, it becomes clear that the 4 daughters of late Sri Anjanamurthy had left the family fold pursuant to the oral partition on 10/02/1996. Hence, the remaining properties continued to be held by the appellants herein as members of the HUF of late Sri Anjanamurthy. Thereafter, the second oral partition on 01/12/1999 took place amongst the continuing members of the HUF. This partial partition was restricted to the 33 dwelling units alone and the remaining properties continued to remain joint family properties. Thereupon, Smt. Ramya was married on 16/02/2004 and she was given a share in the joint family properties. A final partition of the HUF was made on 01/11/2005 in which the amounts receivable from the sale of the properties by the HUF was also partitioned amongst the members. Hence, the properties sold by the appellant did not relate to them in their Individual capacity at all.

18. Accordingly, it is prayed that the incomes assessed under the head capital gains and other sources be deleted since the said incomes cannot be treated as income of the appellant in their individual capacity.”

We heard the submissions of both parties and perused the material on record and complied with the directions of the Hon'ble High Court. We after hearing the submissions and explanations of Id. AR and material relied, find the matter require further examination and verification of facts by the lower authorities. Accordingly, we consider it proper to restore the matter/disputed issue to the file of Assessing Officer to examine and verify the submissions on facts and material and shall provide adequate opportunity of hearing to the assessee to represent the case with

substantial evidence and allow the grounds of appeal of the assesseees for statistical purposes.

3. Now we shall take up the appeals filed by the assesseees before the Hon'ble Tribunal against the order of CIT (Appeals) on protective assessments by Shri Ashok Kumar, Karta of Erstwhile HUF of Late Sri Anjanamurthy and the following appeals which are as under.

<b><u>ITA Number</u></b>	<b><u>Assessment Year</u></b>
777/Bang/2011	2000-01
778/Bang/2011	2001-02
779/Bang/2011	2002-03
780/Bang/2011	2003-04
781/Bang/2011	2004-05
782/Bang/2011	2005-06

4. At the time of hearing, the learned Authorised Representative submitted that there is a delay in filing the appeals before the Tribunal on the protective assessments. Whereas the delay was due to advise of the legal counsels that since substantive assessments are pending before the Hon'ble Karnataka High Court, no appeal need to be filed whereas the Hon'ble High Court has passed the order on 12.09.2011 and the matter was remanded to Tribunal with directions in respect of substantive assessments. Whereas the assessee has filed the appeals with delay of 1076 days before the Tribunal and condonation petitions were filed for the Asst. Years 2000-01 to 2005-06. Since the condonation petitions filed are of the same assessee and delay is common in all these appeals being 1076 days. We consider

it proper to refer to the condonation petition for Asst. Year 2000-01 which is identical for other assessment years. Hence we consider appropriate to refer to the condonation petition for the Asst. Year 2000-01 which is as under :

AFFIDAVIT FOR CONDONATION OF DELAY IN FILING THE APPEAL

I, ASHOK KUMAR, ERSTWHILE KARTHA OF THE ERSTWHILE HUF OF LATE SRI ANJANAMURTHY, aged about 32 years, residing at Bangalore, do hereby solemnly affirm and say on oath as under:-

[1] That being aggrieved by the order of Assessment passed by the learned A.O. for the aforesaid assessment year in me in the capacity as the kartha of the HUF of erstwhile HUF of late Sri Anjanamurthy [the assessment having been made protectively para 4.6 of the assessment order] I had instituted an appeal before the learned Commissioner of Income-tax [Appeals]-VI, BANGALORE.

[2] That I have also been assessed in the status of "INDIVIDUAL" in respect of the income especially Capital Gains substantively and the said income came to be assessed protectively in the hands of the erstwhile Joint Family of late Sri Anjanamurthy by treating me as the kartha as aforesaid.

[3] That against the said assessments made in my "Individual" Status and similarly on my mother Smt. Subbalakshmi and my divided brother Sri Aravind Kumar, we have filed appeals before the learned CIT[A] who disposed off the appeals in ITA NOS.300 to 306/ACIT/CC-1[2]/Bangalore/CIT[A]VI/2007-08 by the common order dated 10/06/2008 for the assessment years 2000-2001 to 2006-2007 in the case of SMT. SUBBALAKSHMI, ITA NOS. in ITA NOS.310 to 316/ACIT/CC-1[2]/Bangalore/CIT[A]VI/2007-08 by the common order dated 10/06/2008 for the assessment years 2000-2001 to 2006-2007 in the case of SRI ARAVIND KUMAR and in ITA NOS.323 to 329/ACIT/CC 1[2]/Bangalore/CIT[A]VI/2007-08 by the common order dated 10/06/2008 for the assessment years 2000-2001 to 2006-2007 in my case[ ASHOK KUMAR].

[4] The appeals in the status of HUF came to be also disposed off by the learned CIT[A] who upheld the protective assessments made on me as above.

[5] That me and each one of the members of the family i.e. me and my mother Smt. Subbalakshmi and my brother Sri Aravind Kumar filed appeals before the Hon'ble ITAT and the Hon'ble ITAT disposed off the appeals in ITA Nos.1149 to 1155/Bang/2008 dated 04/09/2009 for the assessment years 2000-01 to 2006-07 in the case of SMT. SUBBALAKSHMI, ITA NOs.1156 to 1162/Bang/2008 dated 04/09/2009 for the assessment years 2000-01 to 2006-07 in my case [ASHOK KUMAR] and ITA Nos. 1163 to 1169/Bang/2008 dated 04/09/2009 for the assessment years 2000-01 to 2006-07 in the case of SRI ARAVIND KUMAR.

[6] That in as much as the assessments were made protectively on the erstwhile HUF and the same income was substantively assessed in my "Individual" hands and in the hands of my mother Smt. Subbalakshmi and my divided brother Sri Aravind Kumar and I was advised then by my consultant that in view of the appeals having been filed in "Individual" status before the Hon'ble ITAT there was no necessity to file an appeal against upholding the protective assessments made by the learned A O by the learned CIT[A] and accordingly I did not file appeals against the order of the learned CIT[A] upholding the protectively assessments in the status of HUF and at the same time upholding the substantive assessment also.

[7] That, the Hon'ble ITAT came to be dispose off the appeals against the substantive assessments made and confirmed by the learned CIT[A] in our Individual cases and against the order of the Hon'ble ITAT, myself, my brother and my mother filed appeals before the Hon'ble High Court of Karnataka and the department also filed appeals before the Hon'ble High Court of Karnataka and the Hon'ble High Court of Karnataka has also disposed off the appeals by remitting the matter to the Hon'ble ITAT.

[8] That my legal consultant thereafterwords have advised in view of these developments I should file an appeal against the order of the learned CIT[A] who upheld the protective assessments made on me as the kartha of the erstwhile HUF of late Sri Anjanamurthy without cancelling the same especially when the substantive assessments became to upheld by him.

[9] That in view of the advise so received from my consultant who revised his opinion given earlier on which I relied and relied upon, I have filed the appeals against the order of the learned CIT[A] upholding the protective assessments before the Hon'ble ITAT, Bangalore Bench Bangalore on 02/09/2011.

[10] That there has been a delay of 1076 days in filing the appeal which was due to the advice given by the legal consultant and the delay in filing the appeal was beyond my control and the delay was neither intentional, willful nor deliberate and was occasioned on account of the reasons stated above.

[11] That, it is, therefore, prayed that the delay in filing the appeal may kindly be condoned and the appeal may kindly be admitted and disposed off on merits for the advancement of substantial cause of Justice.

DATED THIS THE 19th DAY OF SEPTEMBER, 2011; AT BANGALORE.

DEPONENT

SWORN TO BEFORE ME

At the time of hearing, the learned Authorised Representative made elaborate submissions and reasons for condonation of delay in filing the appeal in the protective assessments with delay of 1076 days. Since the issues of substantive assessments are pending before the Hon'ble High Court and on the advise of the legal counsels the appeal was not filed within the time limit and prayed for condonation of delay. Whereas the learned Departmental Representative opposed to condonation of delay but the fact that the substantive assessments have been restored to the file of Tribunal for fresh consideration by the Hon'ble High Court and Id. DR no serious objection on delay if the matter is remanded to the file of Assessing Officer. We consider the submissions of both the parties and the contents of the Affidavit we found that the proceedings are pending before the Hon'ble High Court on substantive assessments, therefore, the assessee has not filed the appeal in the protective assessments. We are of the opinion that the assessee should not suffer due to delay in filing on the advise of counsel. We support our view relying on the decision of Hon'ble Apex Court in the case of

Collector, Land Acquisition Vs. MST Katiji & Others 167 ITR 471 (SC) and observations are read as under.

" The legislature has conferred the power to condone delay by enacting s. 5 of the Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice—that being the life-purpose of the existence of the institution of Courts. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact, experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherent bureaucratic methodology imbued with the note-making, file- pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community does not deserve a litigant non grata status. The Courts, therefore, have to be informed of the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits."

Accordingly we condone the delay and admit the appeal. Similarly the delay in filing the appeals for Asst. Years 2001-02 to 2004-05 are also condoned and admitted.

5. We heard the rival submissions. The learned Authorised Representative made submissions on the merits of the case and filed written submissions with supporting documents and prayed for allowing the appeals. Whereas the learned Departmental Representative objected that the material/documents filed are to be verified and examined by the lower authorities. Hence we consider it proper to refer to the written submissions filed for the Assessment Year 2000-01 to 2005-06 which are read as under :

1. " The appellant has challenged in these appeals the order of the CIT [Appeals], in upholding the protective assessments made on the appellant, as Kartha of the erstwhile HUF of late Sri Anjanamurthy.

2. There is a delay of 1076 days in filing these appeals before the Hon'ble ITAT, for which separate affidavits for each year have been filed explaining the delay. The appellant relied upon its legal representatives, who advised them not to file the

appeals against the protective assessments made initially as appeals were filed against substantive assessments, which were also confirmed by the learned CIT[A]. Upon remand of the matter by the Hon'ble High Court of Karnataka in the appeals filed against the substantive assessments, the appellant was advised to challenge the protective assessments as well. Thus, the appellant had entirely relied upon the advice given by its legal counsels in the matter and there were no laches on the part of the appellant in not filing the appeal within time.

3. In support of the plea for condonation of delay, the appellant places reliance on the judgement of the **Hon'ble Supreme Court in the case of CONCORD OF INDIA INSURANCE CO. LTD., V. SMT. NIRMALA DEVI & ORS reported in 118 ITR 507 [SC]** (copy enclosed as Annexure-1). Reliance is also placed on the decision of the **Hon'ble ITAT, Bangalore "A" Bench in the case of GLEN WILLIAMS in ITA No.1078/Bang/2014 dated 07/08/2015** (copy enclosed as Annexure-2).

4. In these appeals, the contentions raised by the appellant while challenging the protective assessments made on the appellant are summarized hereinbelow :

- (a) Firstly, the authorities below are not justified in passing an assessment order in the name of "Sri Ashok Kumar, Kartha of the erstwhile HUF of late Sri Anjanamurthy". It is submitted that there is no provisions under the Act to make an assessment on the kartha of the erstwhile HUF, as the kartha of the HUF cannot be treated as a representative assessee for income of the joint family. Furthermore, the kartha of the erstwhile HUF cannot be regarded as a person within the meaning of section 2[31] of the Act. Hence, the assessment orders so passed are void-ab-initio and require to be quashed.
- (b) Secondly, the impugned order is also bad in law and void-ab-initio since, the order has been passed on a non-existent person. Having held in the assessment orders passed in the case of Smt. Subbalakshmi, Sri Ashok Kumar and Sri Arvind Kumar, that the HUF of late Sri Anjanamurthy does not exist, no assessment could be framed on non-existing HUF, since it was not assessed to tax earlier. This is because there is no mechanism under the Act to tax the disrupted HUF as section 171 of the Act is not applicable at all. Hence, the assessment orders so passed are void-ab-initio and require to be quashed.
- (c) Reliance is placed for the aforesaid proposition on the judgement of Hon'ble Karnataka High Court in the case of CIT V. LAKANNA & SONS in ITRC No. 57/1994 dated 26/05/2005, a copy of the same is enclosed herewith as **Annexure-3**.
- (d) Thirdly, it is contended that the assessments framed by recourse to the provisions of section 153C of the Act, are also bad in law as there is no material found in course of search to invoke jurisdiction u/s. 153C of the Act. Furthermore, the appellant had asked for the copies of the satisfaction note recorded to initiate proceedings u/s.153C of the Act, which is a sine-qua-non as held by the **Hon'ble Supreme Court in the case of MANISH MAHESHWARI**

**reported in 289 ITR 341 [SC].** Satisfaction note has not been provided by the authorities below and in the absence of any satisfaction, the assessment order passed u/s. 153C of the Act is bad in law and requires to be quashed.

- (e) Fourthly, on merits the appellant has challenged the inclusion of income in the hands of the joint family on the ground that no assessment could be made on a non-existing person. Hence, the income assessed in the hands of the erstwhile family requires to be vacated.

5. In light of the above, it is prayed that the appeal of the appellant may be allowed for the advancement of substantial cause of justice.”

Accordingly, considering the submissions and material filed and the Id. DR objections, we are of the substantive opinion that disputed issues are to be restored to the file of the Assessing Officer for verification and examination. As the substantive assessments are also restored to the file of Assessing Officer. Accordingly, we set aside the order of CIT (Appeals) and restore the entire disputed issue, to the file of Assessing Officer for verification and examination and the assessee should be provided adequate opportunity of hearing and co-operate in submitting the information and allow the grounds of appeal of the assessee for statistical purposes.

6. Similarly, the assessee has filed the appeals for Assessment Year 2001-02 to 2005-06 in ITA Nos.778 to 782/Bang/2011 where the issues are similar and the decision of the Assessment Year 2000-01 in ITA No.777/Bang/2011 is applicable and accordingly these appeals are also restored to the file of the Assessing Officer with similar directions.

7. In the result, the appeals of assessee in ITA Nos. 1149,1153, 1154, 1156, 1160,1161, 1163,1167 & 1168/Bang/2008 & 777 to 782/Bang/2011 are allowed for statistical purposes.

Order pronounced in the open court on 17th Dec., 2019.

Sd/-

**(B.R. BASKARAN)**  
**ACCOUNTANT MEMBER**

Sd/-

**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

Dated: 17.12.2019.

\*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore