IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : "C", BANGALORE

BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER (SMC)

ITA No.647(Bang)/2019
(Assessment Year : 2002-03)

Shri Late Gurappa P Gawali
Rep. by Legal heir Gurappa Parasappa Gawali,
Shahapur Gate, Gawali Galli,
Bijapur-586 101.
PAN No.AADHG8984N — Appellant

Vs

The Income tax Officer,
Ward-1,
Bijapur-586101 — Respondent

Appellant by : Shri Ashok A Kulkarni, Advocate

Respondent by : Shri Ganesh R Ghale, Advocate, Standing Counsel to Deptt.

Date of hearing : 06-11-2019
Date of pronouncement :

O R D E R

PER SHRI B.R.BASKARAN,AM

The assessee has filed this appeal challenging the order dated 02-08-2018 passed by ld.CIT(A), Belagavi and it relates to assessment year 2002-03.

2. The assessee is aggrieved by the decision of ld.CIT(A) in confirming the assessment of capital gains in the hands of assessee HUF, while the claim of the assessee is that the capital gains has arisen in the individual capacity of the assessee.

3. This is the second round of proceeding. The assessee herein, i.e., Guruppa P Gawali (HUF) had filed its return of income declaring capital loss of Rs.27.30 lakhs for the assessment year 2002-03. The capital loss has arisen on sale of agricultural land. It is also pertinent to note that the assessee has filed the return of income in pursuance of notice issued u/s 148 of the IT Act, 1961. The agricultural land sold by the assessee was located within the Municipal limits and the same was sold to a person named Sri Rajesh Runwal, for a consideration of Rs.13.05 lakhs. However, Shri Rajesh Runwal had agreed before the ADIT(Inv.), Belgaum that the sale consideration was 34.60 lakhs, though the conveyance deed was executed for Rs.13.05 lakhs. Accordingly, in the return of income filed by the assessee in pursuance of notice issued u/s 148 of the IT Act, the assessee also declared sale consideration at Rs.34.60 lakhs and accordingly computed capital loss. Subsequently, the assessee-HUF filed revised return of income declaring capital gain as *'nil',* after claiming deduction u/s 54B of the IT Act, 1961. The deduction u/s 54B of the Act is allowed against the capital gains arising on sale of agricultural land, which falls in the category of capital asset, if the capital gains is invested in purchasing another agricultural land.

4. The AO took the view that the assessee-HUF is not entitled to claim deduction u/s 54B of the Act, since the said deduction was available during the assessment year under consideration only to individual assessees and not to HUF. He further noticed that the assessee had adopted cost of asset as on 01-04-1981 at Rs.1.00 lakh per acre, which was on higher side, when the comparable cases were taken into account. The AO also noticed that the assessee has not deposited capital gains amount which was not utilized before the due date prescribed u/s 139(1) of the IT Act, in capital gains account scheme, even if the deduction u/s 54B of the Act is considered as allowable. Accordingly, the AO rejected the claim for deduction u/s 54B of the IT Act, 1961. While computing capital gains, the AO adopted the cost of agricultural land as on 01-04-1981 at Rs.10,000/- per acre, which was also accepted by the authorized representative of the assessee. Accordingly, the AO computed the capital gains on sale of agriculture land at Rs.31.91 lakhs and assessed the same. The assessee could not succeed in the appeal filed before the ld.CIT(A). Hence, it preferred appeal before the Tribunal in the first round of proceedings.

5. The assessee contended before the ITAT that the agriculture land actually belonged to him in his individual capacity and hence, the AO was not justified in assessing the capital gains in the hands of HUF. The assessee also furnished copies of documents pertaining to purchase of lands. In view of the new

claim put forth, the Tribunal restored the issue of determination of status to the file of the AO, vide its order dated 18-10-2007 passed in IT No.360(B)/2006.

6. In the set aside proceedings, the AO took the view that the land belonged to HUF only and accordingly, took the view that the capital gains was rightly assessed in the hands of the HUF.

7. Aggrieved by the order passed by the AO, the assessee preferred an appeal before the ld.CIT(A), who confirmed the order of the AO with the following observations in the second round of proceedings:-

> *"7. I have carefully considered the facts of the case, the submissions made by appellant and the assessment order passed by the AO.*
>
> *8. The main issue raised in appeal is regarding 'Status' of assessee. Assessee did not file the return of income voluntarily with respect to the assessment year under consideration. He filed return of income in response to the notice u/s 148 and he filed the return of income in the status of HUF only. While filing return of income he submitted details of family tree HUF on his own. No further new evidence was filed by the assessee during the appellate proceedings before the appellate authority or before the AO while passing*

reassessment order giving effect to the ITAT order dated 18-10-20107.

9. The AO after verification of records available before him, had come to the conclusion on fact that assessee's status is 'HUF' as already filed by the assessee on which proper assessment was made. Hence, status of assessee is decided to be 'HUF' only.

9.1 AR did not produce any evidence either during the assessment or during the remand proceedings or during the appellant proceedings in support of change of his status. He voluntarily filed return of income in response to notice u/ 148 in the status of HUF only giving family tree etc., The issue was not raised before the AO or before CIT(A) either. Even for the first time he raised the issue before ITAT, he did not produce any evidence before AO during re-assessment proceedings in obedience to ITAT order. He did not furnish any new evidence in support of his 'individual' status. When assessee claims his status is different from what he himself had voluntarily filed before department, the 'onus' will be on him to establish the facts with evidence. In the absence of evidence AO cannot give different finding than what was available on record. Asessee did not discharge his 'onus', hence his claim of change of status was not accepted by AO.

9.2 No new evidence to establish the status of assessee as individual was brought out by the assessee either during the remand proceedings or during the appellate proceedings.

9.3 The AO in his remand report dated 27/07-2015, has clearly stated that no new evidence was produced by the AR other than those submitted earlier before the AO while passing the reassessment order.

9.4 As the appellant could not establish that its status is individual and not HUF, I am constrained to accept the argument by appellant in a given set of facts, I am of the opinion that AO had acted in accordance with law & given a 'finding' on facts. Hence, no intervention is warranted by the undersigned. Hence, appeal on his ground is dismissed".

8. Aggrieved by the order so passed by the ld.CIT(A), the assessee has filed this appeal before the Tribunal.

9. The ld.AR of the assessee contended that the lands were originally purchased by assessee and his brother in their individual capacity and hence, the capital gains arising on its sale is assessable in the status of the individual and not in the status of HUF. He submitted that the assessee has inadvertently offered the capital gains in the HUF status and the assessee should not be put into trouble on mistake of law. With regard to computation of

capital gains, the ld.AR submitted that the AO has rejected the claim for deduction u/s 54B of the IT Act, *inter-alia* for the reason that the assessee has not deposited unutilized capital gains amount in the capital gains account scheme. The ld.AR submitted that the Hon'ble Karnataka High Court has taken a view in the case of CIT Vs Shri K Ramachandra Rao (ITA No.47 of 2014 and others dated 14-07-2014) that the deposit under capital gains scheme is not warranted if the capital gains is used for purchase of asset as contemplated in sec.54F of the IT Act, 1961. The ld.AR submitted that the ratio of the above said decision shall squarely apply to the instant case also, as the assessee, in the instant case, has utilized the capital gains in purchase of new agricultural land and hence, there is no requirement of making deposit into capital gains account scheme.

10. The ld. DR, on the contrary, submitted that the assessee itself has declared capital gain in the hands of HUF and has claimed deduction u/s 54B of the Act, 1961. It was a conscious decision of the assessee to declare the capital gains in the status of HUF. However, since the deduction u/s 54B of the Act was not available to HUF, the assessee has changed its stand and claimed that the land belonged to individual capacity. The ld. DR further submitted that the AO is not empowered to change the status of the assessee. Further, the assessee has not shown that he has declared the impugned capital gains in the individual status.

11. I heard the rival contentions and perused the record. There is no dispute with regard to the fact that the assessee, herein is assessed in HUF status and it has declared the capital gains in its return of income. It is also pertinent to note that the assessee has filed the return of income in pursuance of notice issued u/s 148 of the IT Act, 1961. We noticed earlier that the assessee has sold agricultural land located within the Municipal limits to a person named Sri Rajesh Runawal, for a consideration of Rs.13.05 lakhs. However, since Shri Rajesh Runawal agreed before the ADIT(Inv.)Belgaum that the sale consideration was 34.60 lakhs, the assessee also declared the sale consideration at Rs.34.60 lakhs, as noticed earlier. We noticed earlier that the assessee had originally declared capital loss of Rs.27.30 lakhs, due to some computational error. However, in the revised return of income, the assessee-HUF herein has declared capital gains as *nil*, after claiming deduction u/s 54B of the IT Act. It can be noticed that the assessee-HUF, in two occasions, i.e., in the original return and in revised return of income, has conscious declared the capital in its hands. Accordingly, there is merit in the submission of Ld D.R that the assessee has taken a conscious decision to file return of income in the status of HUF only.

12. I also notice that the assessee has not brought any new material on record to show that the land actually belonged to individual status. As rightly pointed out by the ld.CIT(A), the onus to prove the above said claim would lie on the assessee and the assessee has failed to discharge its onus by bringing cogent material in support his claim. Under these set of facts, I have no

other option but to confirm the order passed by the ld.CIT(A) on this issue.

13. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on

(B.R.BASKARAN)
ACCOUNTANT MEMBER

Dated:
***am**
Copy of the Order forwarded to:
1.Appellant;
2.Respondent;
3.CIT;
4.CIT(A);
5. DR
6. ITO (TDS)
7.Guard File

By Order
Asst. Registrar