

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No. 1346/H/2017 Assessment Year: 2009-10		
Income-tax Officer, Ward - 15(2), Hyderabad.	Vs.	Mekala Narayana Reddy, Hyderabad. PAN - BEUPR 6387A
(Appellant)		(Respondent)
Revenue by:		Shri Rohit Mujumdar
Assessee by:		None
Date of hearing:		26/10/2021
Date of pronouncement:		28 /10/2021

ORDER

PER L.P. SAHU, A.M.:

This appeal filed by the Revenue is directed against CIT(A) - 7, Hyderabad's order dated 22/03/2017 for AY 2009-10 involving proceedings u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 ; in short "the Act, on the following grounds of appeal:

"1. The Ld. CIT(A) erred both on facts and law of the case.

2. The Ld. CIT(A) not justified in considering the assessee's appeal establishing the title over the subjected property sold based on the unregistered family partition deed without the signatures of witness and not reflected in revenue records.

3. The Ld. CIT(A) ought to have appreciate but failed to distinguish the stand taken by the Assessing Officer disallowing the claim made by the assessee u/s.54F of the I.T. Act, in the individual capacity as the assessment was -completed in the H.U.F. capacity.

4. Any other ground(s) that may be urged at the time of hearing."

2. Briefly the facts of the case are that the assessee along with 12 others were declared as protected tenants of land in Survey No's 512, 513, 588 and 591 admeasuring 14.05 acres situated in Uppal Kalsa (v) Uppal Mandal, belonging to Sri Sridhar Naik and Sri Dhananjaynaik and these tenants have purchased the land for an amount of Rs.27,200/- vide order in Form-VIA of the Revenue Divisional Officer, Hyderabad East division in L/7751/1984 dated 24-2-1993. The survey numbers were revised and the survey no.588 & 591 were divided into 588/1 and 588/2 & 591/1 and 591/2 respectively. Out of survey no.588/1 a portion of land measuring 5 acres 10 guntas and potion measuring 34 guntas in survey no.591/1, were sold to M/s. Metro Cash & Carry India Private Limited, Bangalore on 15-9-2008, vide doc.no.8643/08, sold for a total sum of Rs,42.70 crores. In this, the assessee received Rs.20,00,000/-. Since the assessee did not file his return of income for the Asst. Year

2009-10, a notice u/s.148 was issued on 10-7-2013. The assessee filed his return of income on 31-10-2012, in his individual status, where in the sale proceeds of Rs.20 lakhs were declared, on partition of the total sale consideration of Rs.3,28,35,500/- in between himself and his 4 sons, and capital gain worked out. The assessee has not declare the capital gain of Rs.3,28,35,500/- in his return of income. The Assessing Officer completed the assessment u/s.143(3) r.w.s. 147 of the Act assessing the total income at Rs.3,28,42,711/-. By making the following additions:

- (i) Addition on capital gain: Rs.3,28,35,500/-
- (ii) Interest from Banks on FOR & S.B.: Rs.10,502/-

3. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and contended as under:

"Without prejudice to the above contention, it is submitted that the appellant and his sons partitioned their properties on 1-11994. The sale proceeds were also paid to them separately, as shown at para 1.2 above, by cheques. Further, in the preamble of the Sale deed, it is mentioned against the names of the sons of the appellant as under: (please see pages 12 to 17 of the Paper Book No.2)

"for self and as Kartha of his HUF"

From this also it is clear that the consideration was paid to the karthas of the sons' HUFs . The sons of the appellant filed their Returns of income. The Returns of income were filed by three of his sons - Sri M.Hanumantha Reddy, Sri M. Santosh Reddy and Sri ;M.Karunakar Reddy. The details of the other son, Sri

M.Sanjeeva Reddy could not be collected due to family misunderstandings.

In these circumstances, it is prayed that the Hon'ble Commissioner of Income tax (Appeals) be pleased to direct the learned Assessing Officer to delete the consideration received by his sons, as karthas of their HUFs, from the computation of capital gain in the appellants' hands. "

4. After considering the submissions of the assessee, the CIT(A) deleted the addition made by the AO on account of capital gain by observing as under:

5.2 I have considered the assessment order and submissions of the assessee. The question which arises is whether there is partition of HUF as claimed by the assessee or not. The partition of HUF can be oral or documentary. With reference to the documentary evidence as to partition produced by the assessee, the Assessing Officer, finding that it is not signed by all concerned and that the same was not produced/registered with Revenue Authorities. However, the above factors are not decisive. What is to be seen is conduct of parties. The members of the family received amount for their share directly from the purchases, filed their returns (smaller HUF/individual) separately before the issue of any notices are issued by the department. In view of the factual position emanating from the record and their conduct at the time of Registration and subsequently, it has to be held that there was partition of HUF effected before the 'transfer' of asset. In view of the above, the 'capital gains' is not taxable in HUF status and the same is liable to be deleted. Accordingly, the capital gains assessed is deleted."

5. Aggrieved by the order of CIT(A), the revenue is in appeal before the ITAT.

6. At the time of hearing, none appeared on behalf of the assessee and, therefore, we proceed to decide the appeal after hearing the ld. DR and considering the facts available on record.

7. We have heard the ld. DR and perused the material on record as well as gone through the orders of revenue authorities. The crux of the issue in this appeal is whether the capital gains is taxable in the hands of the HUF or not. The issue is settled by the decision of the coordinate bench in the group cases of the assessee in ITA No. 854/Hyd/2013 and others in the case of Shri M. Santosh Reddy and others vide order dated 31/01/2020 wherein the coordinate bench has held as under:

“5. Having regard to the rival contentions and the material on record, we find that in the case of one Shri Ram Reddy, S/o Shri Laxma Reddy, the issue of the partition had come up and it was held that he is liable to tax in his individual capacity and not in the capacity of HUF. In fact, it was the contention of Shri Ram Reddy that the property belongs to HUF and therefore cannot be brought to tax in his individual capacity. The same has been negated by the Department and the issue had travelled upto ITAT and the Coordinate Bench of ITAT in ITA No.1052/Hyd/2013, accepted that the partition deed had been acted upon and held that the entire sale consideration should not be considered for capital gain in the hands of the assessee therein. The Tribunal has clearly held that the partition deed need not be registered. In the case on hand, the individual assessee have offered capital gains to tax in their hands as individuals or as smaller HUFs and have claimed exemption u/s 54F of the Act. We find that there are total of 45 persons in these transactions but in the cases of only 13 people they have either filed returns of income or have

been picked up for verification. The Department has filed a status report along with the details and it is seen therefrom that most of the parties have either not filed the returns of income or their returns were not picked up for scrutiny except the assessee before us. Further, it is seen that there was no HUF PAN available to most of the assessee. Since the Tribunal in the case of one of the co-owner has accepted that there was a partition of the property amongst the parties before the sale of the property and each individual has received the sale consideration in accordance with their share of the property, we are also inclined to accept that there is partition of the property, and therefore, the individual or the smaller HUF only is liable to tax. In view of the same, we set aside the orders of the CIT (A) and remand the issue to the file of the AO with the direction to consider the claims of exemption u/s 54F of the Act in the case of each of the assessee before us. If the assessee fulfil the conditions for exemption u/s 54F, then there shall be no disallowance in the case of each of the assessee.

7.1 The coordinate bench, inter-alia, held that since the partition of the property has taken place, the capital gain tax liable in the individual capacity and not in the capacity of HUF. Following the decision of the coordinate bench, we find no infirmity in the order of the CIT(A) in deleting the addition on account of capital gains tax in the hands of the assessee and upholding the order of the CIT(A), we dismiss the grounds raised by the revenue on this issue.

8. In the result, appeal of the revenue is dismissed in above terms.

Pronounced in the open court on 28th October, 2021.

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Hyderabad, Dated: 28th October, 2021.

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Copy to :

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<i>3</i>	<i>CIT(A) - 7, Hyderabad</i>
<i>4</i>	<i>Pr. CIT - 7, Hyderabad</i>
<i>5</i>	<i>ITAT, DR, Hyderabad.</i>
<i>6</i>	<i>Guard File.</i>