

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.358/Bang/2020
Assessment Year: 2006-07

Shri Ashok Kumar Luniya No.205, Jain Temple Road Shivajinagar Bangalore 560 051.  <b>PAN NO :AFGPA8662M</b>	<b>Vs.</b>	ITO Ward-2(1) Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

ITA No.359/Bang/2020
Assessment Year: 2006-07

Shri Suresh Kumar Luniya No.205, Jain Temple Road Shivajinagar Bangalore 560 051.  <b>PAN NO :ATYPS5150J</b>	<b>Vs.</b>	ITO Ward-2(1) Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

ITA No.360/Bang/2020
Assessment Year: 2006-07

Shri J. Dilip Kumar Luniya No.205, Jain Temple Road Shivajinagar Bangalore 560 051.  <b>PAN NO :AGFPD4781N</b>	<b>Vs.</b>	ITO Ward-2(1) Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

ITA No.361/Bang/2020
Assessment Year: 2006-07

Shri Dinesh Kumar Luniya No.205, Jain Temple Road Shivajinagar Bangalore 560 051.  <b>PAN NO :AGFPD4780P</b>	<b>Vs.</b>	ITO Ward-2(1) Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Smt. Sheetal Borkar, A.R.
<b>Respondent by</b>	:	Shri Swaroop Mannava, D.R.

Date of Hearing	:	17.11.2021
Date of Pronouncement	:	17.11.2021

## **ORDER**

### **PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

These appeals filed by the respective assesseees are directed against the orders passed by Ld CIT(A) in their respective hands for assessment year 2006-07. Since contentions raised by these assesseees are identical in nature and since they arise out of common set of facts, all these appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. All these assesseees are challenging the orders passed by Ld CIT(A) in dismissing the appeals without deciding the issues contested before him on merits. They have also raised grounds on merits of addition.

3. The Ld A.R submitted that the assessment of the year under consideration was reopened by the AO u/s 147 of the Income-tax

Page 3 of 6

Act,1961 ['the Act' for short] in order to assess capital gains arising on sale of land. The notices were issued in the individual status of the assesseees. All these assesseees contended before the AO that there was actually no transfer of land and hence capital gain is not assessable. The AO did not accept the contentions of the assessee and assessed long term capital gain of Rs.1,08,06,816/- in the hands of each of the assesseees herein.

4. All these assesseees filed appeals before Ld. CIT(A), inter-alia contending that the capital gain, if any, is assessable only in the hands of HUF status of the assesseees, since the land belonged to HUF. Accordingly, it was contended before Ld. CIT(A) that capital gain assessed in the individual status of the assesseees is liable to be cancelled. Since the assesseees have contended that the capital gains, if any, is assessable in the hands of the HUF, they filed appeal memo in form No.35 mentioning the Permanent Account Number (PAN) of HUF.

5. The Ld. CIT(A) noticed that the assessing officer has passed the assessment order in the status of individual, but the assesseees have filed the appeals before him mentioning the PAN of HUF, in whose hands there was no assessment order. Accordingly, the Ld. CIT(A) took the view that no valid appeal has been filed before him u/s 246A of the Act. When this aspect was pointed out to the assesseees, the Ld. A.R. of the assessee proposed to file appeal in the status of individual also and requested the Ld. CIT(A) to club the same along with HUF appeals. The said request was not accepted by Ld. CIT(A). Accordingly, the Ld. CIT(A) dismissed appeals filed by these assesseees holding them as invalid. Aggrieved, the assesseees have filed these appeals before us.

Page 4 of 6

6. The Ld. A.R. submitted that the A.O. has completed the assessment in the individual status assessing the proportionate share of capital gain arising on sale of land. It is the contention of the assesseees that the land belonged to HUF of the respective assesseees and hence capital gain, if any, is assessable in the hands of the HUF only. Accordingly, as advised by the tax consultant, these assesseees have filed appeals mentioning the PAN of HUF. The Ld. A.R. submitted that one of the grounds raised before Ld. CIT(A) was that the capital gain, if any is assessable in the hands of the HUF only and hence the same has prompted the tax consultant to file appeal mentioning PAN of HUF. Accordingly, the Ld. A.R. submitted that mentioning of PAN of HUF in Form No.35 is a mistake which Ld. CIT(A) should have allowed to rectify. Accordingly, the Ld A.R contended that the Ld CIT(A) was not justified in dismissing the appeals without allowing the assesseees to rectify Form NBo.35 and in not adjudicating the grounds urged on merits.

7. The Ld. A.R. further submitted that the assesseees may be provided with an opportunity to file revised form No.35 mentioning the PAN of individual status, so that the appeals already filed before Ld CIT(A) could be adjudicated on merits. Accordingly the Ld A.R prayed that all the contentions raised in the present appeals may be restored to the file of Ld. CIT(A).

8. We heard Ld. D.R. and perused the record. It is an undisputed fact that the assessments have been passed in the individual status of the assesseees. However, while filing appeal before Ld. CIT(A), the PAN belonging to HUF status of the assesseees has been mentioned. From the grounds of appeal urged before Ld. CIT(A), which is extracted by Ld. CIT(A) in his order, it can be

Page 5 of 6

noticed that the assesseees have taken a plea that the capital gain, if any, arises only in the hands of HUF. Accordingly, it appears that the PAN of HUF has been mentioned in Form No.35 instead of mentioning the PAN of individual. In our considered view, in the interest of natural justice, the Ld CIT(A) should not have been too technical and should have allowed the assesseees to file revised Form No.35. Accordingly, we are of the view that these assesseees should be allowed to file Form No.35 mentioning the PAN of individual. Further, we notice that the Ld. CIT(A) has not adjudicated the grounds urged on merits. Under these set of facts, we are of the view that all the issues urged before us are required to be restored to the file of Ld. CIT(A) for adjudicating them on merits. Accordingly, we set aside the orders passed by Ld. CIT(A) in the hands of the assesseees herein and restore all the issues to his file for adjudicating them on merits. All the assesseees are also directed to file revised Form No.35 mentioning PAN of individual status, so that the defect pointed out by the Ld. CIT(A) would get rectified.

9. In the result, all the appeals filed by the assesseees are treated as allowed for statistical purposes.

Order pronounced in the open court on 17<sup>th</sup> Nov, 2021.

**Sd/-**  
**(N.V. Vasudevan)**  
**Vice President**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 17<sup>th</sup> Nov, 2021.  
VG/SPS

**Copy to:**

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.