



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER  
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

**ITA No.85/CTK/2019**

Assessment Year : 2014-15

Sarbeswar Panda, S/O. Late Dhruba Charan Panda, Ghoda Bazar, Station Road, Near Budha Mandir, Puri	Vs.	ITO, Puri Word, Penthakota, Sri Vihar Marg, Puri.
PAN/GIR No.BWDPP 4210 M		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri B.R.Pattnaik, AR  
Revenue by : Shri S.C.Mohanty, Sr DR

**Date of Hearing : 31/01/2023**  
**Date of Pronouncement : 31/01/2023**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order of the Id CIT(A)2, Bhubaneswar, dated 17.12.2018 in Appeal No.0310/2017-18 for the assessment year 2014-15.

2. Shri B.R.Pattnaik, Id AR appeared for the assessee and Shri S.C.Mohanty, Id Sr DR appeared for the revenue.

3. It was submitted by Id AR that the assessee is an individual, who is basically an agriculturist. It was the submission that the assessee along

with his other relatives owned a plot of land consisting of 0.920 decimals at Khurda. It was the submission that the said land was originally acquired sometimes in 1977 in the name of the assessee and his aunt Mrs Dhani Panda. It was the submission that the land was purchased from assessee's uncle Shri Govinda Chandra. It was the submission that the assessee was only 16-17 years old at that point of time and was a minor. It was the submission that the property was a HUF property. The same was sold during the impugned assessment year and the Assessing Officer has assessed 1/2 share of the sale consideration in the hands of the assessee. It was the submission that the assessment in the hands of the assessee itself was erroneous and it was a HUF that has to be assessed. Ld AR has also filed the genealogy of the assessee. It was the prayer that the assessment as done in the hands of the assessee as an individual may be set aside.

4. In reply, Id Sr DR submitted that at the outset, the assessee has not been able to prove that the land was a HUF property. It was the submission that even purchase documents of the said property had not been produced before the Assessing Officer. It was the submission that fresh evidences have been produced before the Tribunal and consequently, the fresh evidences could not be considered. It was the submission that the orders of the Assessing Officer and Id CIT(A) are liable to be upheld.

5. We have considered the rival submissions. A perusal of the facts of the present case shows that the assessee has not made claim of HUF

property before the Assessing Officer. This being so, as the issue of HUF is not being considered by the Assessing Officer, we are of the view that the Assessing Officer should be given an opportunity to examine the claim of the assessee in respect of existence of the HUF. The Assessing Officer shall also examine as to what has happened in the case of other co-owners of the said property so as to assist him in arriving at the conclusion in respect of the status of HUF. In these circumstances, the impugned assessment order is set aside and the issues are restored to the file of the Assessing Officer for re-adjudication after granting the assessee adequate opportunity of hearing to the assessee. In the event that the property is found to be HUF property, liberty is given to the Assessing Officer to proceed to readjudicate the issue in accordance with the law.

6. In the result, appeal of the assessee stands partly allowed for statistical purposes.

Order dictated and pronounced in the open court on 31/01/2023.

Sd/-  
**(Arun Khodpia)**  
**ACCOUNTANT MEMBER**

sd/-  
**(George Mathan)**  
**JUDICIAL MEMBER**

Cuttack; Dated 31/01/2023  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The appellant: Sarbeswar Panda, S/O. Late  
Dhruba Charan Panda, Ghoda Bazar,  
Station Road, Near Budha Mandir, Puri
2. The Respondent: ITO, Puri Word,  
Penthakota, Sri Vihar Marg,  
Puri
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT-2, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**