IN THE INCOME TAX APPELLATE TRIBUNAL
SMC-'C' BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No. 476/Bang/2024
Assessment Year : 2014-15

Shri Erki Ramesh Upadhyaya HUF, 1-1, Gurukripa, Kalleri, Ramakunja Post, Alankar, Puttur – 574241. **PN: AAAHE1267M**	vs.	The Income Tax Officer Ward – 1, Puttur.
APPELLANT		**RESPONDENT**

Assessee by	:	Shri V. Srinivasan, Advocate
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Department

Date of Hearing	:	19-04-2024
Date of Pronouncement	:	26-06-2024

ORDER

PER KESHAV DUBEY, JUDICIAL MEMBER

This appeal at the instance of the assessee is directed against the CIT(A)/NFAC order dated 15.02.2024 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1060993092(1) passed u/s. 250 of the IT Act, 1961 for A.Y. 2014-15.

2. The assessee has raised the following grounds.

"1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The order of re-assessment is bad in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 148 of the Act did not exist and have not been complied with and consequently, the re-assessment requires to be cancelled.

3. The learned CIT[A] is not justified in not disposing the ground raised with reference to the impugned order passed by the learned A.O. who without disposing off the objections of the appellant for reopening the assessment by passing a separate speaking order as required by the judgement of the Hon'ble Supreme Court in the case of GKN DRIVESHAFTS reported in 259 ITR 19 [SC] is bad in law and hence, the assessment order so passed deserves to be cancelled.

4. Without prejudice to the above, learned CIT[A] failed to appreciate the learned A.O. has erred on facts and in law in making the assessment on the appellant which is illegal and void-ab-initio and requires to be annulled in as much as, the erstwhile appellant family ceased to exist on the death of Smt.Yashoda on 25/07/2014 and was not in existence at all at the time of issuance of notice or making assessment and consequently, the assessment made requires to be annulled having regard to the ratio of the decisions of the jurisdiction High Court in the following cases :

[a] G E Narayana &Ors reported in 193 ITR 41 [Kar]

lb] CIT V. Lakkanna& Sons in ITRC No.57/1994 dated 26/05/2005 [Kar]

[c] Subbalakshmi & Others reported in 202 Taxman 448 [Kar]

4.1 The learned CIT[A] ought to have appreciated that the mere fact that the kartha of the erstwhile HUF had filed the return of income after the disruption of the HUF on 25/07/2014 on the death of Smt. Yashoda or that the appellant HUF was in existence during the relevant financial year would not enable the assessment order to

be passed on the erstwhile HUF, which was not assessed to tax in the past and therefore, the provisions of sec. 171 of the Act have no application under the facts and in the circumstances of the appellant's case.

4.2 The learned CIT[A] ought to have appreciated that the return of income filed by the appellant was invalid as there was no HUF in existence on the date of filing the return of income on account of the death of Smt. Yashoda and at any rate, the assessment proceedings were not based on the said return of income filed by the appellant and even if the said return of income filed by the appellant was regarded as a valid one, no order of assessment could be made in respect of the disrupted HUF that was not in existence on the date of passing the assessment order an hence, the assessment order passed by the learned A.O. deserves to be cancelled.

5. Without prejudice to the above, the CIT[A] is not justified not disposing of the ground raised with reference addition of a sum of Rs.25.70,528/- made by A.O., being the interest received on Income-tax refund as income under the facts and in the circumstances of the appellant's case.

6. Without prejudice to the right to seek waiver before the Hon'ble DG/CCIT, the appellant denies themselves liable to be charged to interest u/s.234A and 234B of the Act, which under the facts and in the circumstances of the appellant's case deserves to be deleted.

7. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."

3. Ground nos. 2 and 3 are not pressed by the Ld.AR of the assessee and hence dismissed as not pressed.

4. The brief facts of the case are that assessee is a Hindu Undivided Family (HUF) consisting of two members one Shri E. Ramesh Upadhyaya as Karta and Smt. Yashoda, wife of Sri

Ramesh Upadhyaya. The return of income was filed by the HUF for the A.Y. 2014-15 manually on 30.03.2015 by declaring total income of Rs. 14,840/-. Subsequently, the assessee e-filed its return of income for the A.Y. 2014-15 on 23.09.2018 by declaring the same total income of Rs.14,840/- which was invalidated by the CPC as the same was barred by time.

5. The information was available with the income tax department that there is a escaped assessment since the HUF has received a sum of Rs.25,70,528/- as interest u/s. 244A on income tax refund for the A.Ys. 2000-01, 2001-02 and 2003-04 during the Financial Year 2013-14 relevant for the A.Y. 2014-15. Accordingly the case for the A.Y. 2014-15 was reopened by issuance of notice u/s. 148 after obtaining necessary approvals from the Additional Commissioner of Income Tax, Range – 1, Bangalore. In response to notice u/s. 148 issued, the assessee HUF has e-filed the return of income for A.Y. 2014-15 on 07.09.2019 by declaring again the total income of Rs.14,840/- and agricultural income of Rs.6,80,450/-.

6. Further, during the course of Reassessment proceedings the copies of return of income filed along with computation of income / bank account statements were filed by the Assessee and also the copy of reasons recorded for initiation of proceeding u/s. 148 has also been furnished to the assessee vide letter dated 13.11.2019. The assessee has objected the initiation of reassessment proceeding u/s. 148 on the main contentions as under:

> *"It is firstly submitted that the assessment proceedings taken up by your Honour in respect of the aforesaid HUF of the undersigned known as E. Ramesh Upadhyaya (BLIP), is bad in law and void ab-initio in as much as the said HUF has ceased to exist and no order of assessment can be passed against the nonexistent HUF. It may be mentioned here that the aforesaid HUF (before its disruption) consisted of two persons viz; the under signed E. Ramesh Upadhyaya, as Kartha and Smt. Yashoda, my wife as the other member thereof On 25.07.2014, my wife Srnt. Yashodha, attained the lotus feet of the Lord and upon her demise, the aforesaid HUF ceased to exist as I became the sole surviving member of the HUF. In other words, after 25.07.2014, there is no HUF of E. Ramesh Upadhyaya, having PAN: AAAHE1267M, as stated in your Honour's aforesaid notice u/s. 148 of the Act and the reasons recorded and hence, the proceedings initiated deserve to be dropped."*

7. But the Ld.AO had observed that Smt. Yashoda one of the member of the HUF and also wife of Shri E. Ramesh Upadhyaya (Karta of HUF) has died on 25.07.2014 however Shri E. Ramesh Upadhyaya in the capacity of Karta of HUF has filed return of income of HUF voluntarily. Further, the assessee HUF has declared only bank interest received amounting to Rs.14,840/- in its return of income and the interest received u/s. 244A of Rs.25,70,528/- received during the Financial Year 2013-14 relevant for the A.Y. 2014-15 has not been offered for taxation by the assessee HUF. Further, the Ld.AO reiterated that not only for the A.Y. 2014-15, which is in dispute before us, but also for the A.Y. 2015-16, Shri E. Ramesh Upadhyaya in the capacity of the Karta of the HUF, had also filed return of income of HUF on 24.03.2017. The Ld.AO also observed that on verification of the bank accounts of the HUF, shows that the same were still active even after the death of Smt. Yashoda wife of Shri E. Ramesh

Upadhyaya (Karta of HUF) and accordingly added the entire interest of Rs.25,70,528/- received on income tax refund by stating that for the relevant period i.e. between 01.04.2013 to 31.03.2014, the HUF was very well in existence with two members and the assessment is done only after the end of the Financial Year.

8. Aggrieved by the assessment completed u/s. 143(3) r.w.s. 147 of the IT Act, 1961 dated 26.12.2019, the assessee preferred appeal before the Ld.CIT(A)/NFAC. The Ld.CIT(A) although passed the order u/s. 250 by taking into consideration the material available on record before him and dismissed the appeal in the absence of any new submissions as well as non-compliance on the part of the appellant which leads to the conclusion that the appellant is not interested in pursuing the appeal.

9. Aggrieved by the order of the Ld.CIT(A), the assessee has filed the present appeal before the Tribunal.

10. **The solitary issue raised before us, is that under the facts and circumstances of the case, can the Reassessment proceeding be initiated on 04/03/2019 especially when one of the member of HUF out of two expired on 25.07.2014 i.e way before filing of the Return of Income as well as initiation of the Assessment/Reassessment Proceedings**. Before us, the Ld.AR submitted that the assessment is illegal, void-ab-initio and requires to be annulled as the erstwhile appellant family ceased

to exist on the death of Smt. Yashoda on 25.07.2014 and the HUF was not in existence at all at the time of issuance of notice for making assessment. Further, the Ld.AR vehemently reiterated that mere fact that Karta of erstwhile HUF has filed the return of income after the disruption of HUF would not enable the assessment order to be passed on the erstwhile HUF and the provisions of section 171 of the act have no application under the facts and circumstances of the case. Further, the Ld.AR relied on the order of Jurisdictional High Court in the case of *CIT vs. M/s. Lakkanna & Sons* in ITRC No. 57/1994 dated 26.05.2005 [Kar] as well as another case of the same Jurisdictional High Court in the case of *T. Govindappa Setty vs. ITO* & Anr. [1997] 231 ITR 892 (Kar) and prayed to annul the order of the authorities below on the ground that on the date of filing of the return as well as on the date of assessment, there was no Hindu Undivided Family in existence.

11. The Ld.DR on the other hand supported the orders of the authorities below and further fervidly submitted that the HUF was in existence during the Fin. Year 2013-14 relevant for the Asst. Year 2014-15 and the wife of the Karta Smt. Yasodha died only on 25/07/2014 i.e. after the completion of the Fin. Year in question. Further the Ld. DR submitted that the Karta of Huf had continued to file returns of HUF even after the death of his wife member admitting the existence of HUF. He also relied on the decision in the case of Gowli Buddanna vs. CIT, Mysore reported in [1966] 60 ITR 293 (SC).

12. We have heard the rival submissions and perused the material on record.

13. After analysing the fact of this case, considering the submissions made by the Ld.AR and DR, we cannot brush aside the fact that after the death of Smt. Yashoda, wife of Shri E. Ramesh Upadhyaya on 25.07.2014, there exist only one member in the Hindu Undivided Family (HUF) based on the observation by the assessing officer at the beginning of the assessment order that the assessee is a HUF consist of only two members i.e. Shri E. Ramesh Upadhyaya as Kartha and Smt. Yashoda wife of Shri E. Ramesh Upadhyaya. The fact that the present HUF Consists of two members is also not disputed either by the AO or Ld DR.

14. Hindu Undivided Family (HUF) is a person u/s. 2(31) of the IT Act, 1961 and treated as a separate entity for the purposes of assessment under the IT Act. Under the Hindu law, a HUF is a family which consist of all persons lineally descendant from a common ancestor and includes their wives and unmarried daughters. As the definition of Hindu Undivided Family is not found under the IT Act, therefore it must be construed in the sense in which it is understood under the Hindu law. In the case of Shri Krishna Prasad vs. CIT reported in (1974) 97 ITR 493 (SC), **the "Family" connotes a group of people related by blood or marriage**. According to Shorter Oxford English Dictionary, 3rd Ed. the word "Family" means the group consisting of parents and their children, whether living together or not; in wider sense, all those who are nearly connected by blood or affinity; a person's

children regarded collectively; those descended or claiming descent from a common ancestor; a house, kindred, lineage; a race; a people or group of peoples. According to Aristotle (Politics I), it is the characteristic of man that he alone has any sense of good and evil, or just and unjust, and the association of living beings who have this sense make a family and a State.

15. Thus we are also of the opinion that the word "Family" always signifies a group. Plurality of persons is an essential attribute of a family. A single person, male or female, does not constitute a family. He or she would remain, what is inherent in the very nature of things, an individual, a lonely wayfarer till per chance he or she finds a mate. A family consisting of a single individual is a contradiction in terms. Section 2(31) of the Act treats a Hindu undivided family as an entity distinct and different from an individual and it would, in our opinion, be wrong not to keep that difference in view.

16. In the present case, the wife of Shri E. Ramesh Upadhyaya HUF who was one of the members of the HUF has died on 25.07.2014 leaving behind only one coparcener member Shri E. Ramesh Upadhyaya who is the Karta of HUF.

17. We are of the opinion that as on the date of filing of the return as well as on the date of the assessment, there was no Hindu Undivided Family in existence by Respectfully following the decisions in case of T. Govindappa Setty vs. ITO & Anr. (supra) of the Jurisdictional High Court dated 26.06.1997. We

are of the opinion that when there are only two members constituting a Hindu Undivided Family one of them died, consequently Hindu Undivided Family ceased to exist.

Further, we are also of the opinion that the provisions of section 171 of the IT Act cannot be applied here to make an assessment order assessing the erstwhile Hindu Undivided Family. Section 171 of the IT Act does not make any provision to meet such a contingency. Thus it is very clear that a specific provision is necessary to make an order of assessment against a taxable entity which does not exist even on the date of return filing itself and also on the date of initiation of assessment proceedings. Merely by filing of the return by the Karta of the HUF after the death of the member of the HUF does not give new life to the status of HUF.

18. Further the reliance placed by the Ld.DR in the case of Gowli Buddanna vs. CIT, Mysore (supra) was under different facts and circumstances and does not apply to present case. The issue in that case was whether the sole male surviving coparcener of the HUF, his widowed mother & Sisters constitute a Hindu Undivided family within the meaning of the I. Tax Act ?

19. Further, under the similar facts & circumstances, the Hon'ble jurisdictional Karnataka High Court in the case of T. Govindappa Setty V. Income Tax Officer (1998) 231 ITR 892 (Karn-HC) held as under:-

> *"14. The next question that would arise for consideration is whether the principle laid down by this court in the case of CWT v. G. E. Narayana [1992] 193 ITR 41, applies to the*

facts of the present case. In the case of CWT v. G. E. Narayana [1992] 193 ITR 41, this court while considering the provisions of the Wealth-tax Act, after referring to the decisions of the Bombay High Court in the case of CWT v. Keshub Mahindra [1983] 139 ITR 22, and also of the Madras High Court in the case of Seethammal v. CIT , has taken the view that on the valuation date under the Wealth-tax Act, an order of assessment cannot be made if there is no Hindu undivided family on the said date. In the said decision, this court, at page 47, has observed thus :

"The forerunner to this principle is found in the decision of the Bombay High Court in Ellis C. Reid v. CIT, AIR 1931 Bom 333; [1930] 5 ITC 100, wherein the Bombay High Court held that, when a person died after the commencement of the assessment year but before his income for the relevant accounting year was assessed, his executor was not liable to pay the tax. After this decision, section 24B was introduced in the earlier Indian Income-tax Act, 1922 (similar to the present section 159). That the existence of the assessee at the time of the assessment order is an absolute necessity is a matter which has been recognised in all these decisions and if the assessee is not in existence, there should be a specific provision to assess the said income which was liable to be taxed under the provisions of the Income-tax Act. The same logic governs the Wealth tax Act also.

In CWT v. Keshub Mahindra [1983] 139 ITR 22, the Bombay High Court has pointed out the distinction between the Income-tax Act and the Wealth-tax Act and there is an observation that the liability to tax arises on the valuation date under the Wealth-tax Act. This observation was sought to be developed by Mr. G. Chanderkumar in support of his contention, but we are of the view that the observation has to be understood in the context of the case and, actually, the Bombay High Court held that, if a person is not alive on the valuation date and he dies during the course of the previous year before the valuation date, then no liability arises under the Act so far as the said person is concerned. Similarly, the decision of the Madras High Court in A and F. Harvey Ltd. (As Agents to executors of the Estate of late Andrew Harvey) v. CWT is of no assistance to Mr. Chanderkumar. The decision of the Calcutta High Court in CWT v. Executors to die Estate of Sir E. C. Benthal , is also of no avail to learned counsel for the Revenue. CWT v. Ridhkaran is a decision of the

Rajasthan High Court which again has no relevance to the facts of the instant case. The Rajasthan High Court pointed out that, when a return is filed under a particular status and the Assessing Officer does not accept it as a proper status, a fresh notice shall have to be issued to the proper person.

An identical situation arose before the Madras High Court in Seethammal v. CIT , though under the provisions of the Income-tax Act. There were only two members constituting an Hindu undivided family; one of them died; consequently, the Hindu undivided family ceased to exist. The question was whether section 171(1) of the Income-tax Act could be applied to make an order of assessment assessing the erstwhile Hindu undivided family. The Madras High Court pointed out that there was no provision at all to make the assessment on the Hindu undivided family, even though the income was earned during the accounting year when there was an Hindu undivided family. Section 171 of the Income-tax Act did not make any provision to meet such a contingency. It is thus clear that a specific provision is necessary to make an order of assessment against a taxable entity which does not exist on the date of the assessment, even though the said entity was in existence when the liability to tax arose.

The Hindu undivided family is an assessable entity; without the presence of the assessee, it is not possible to make an order of assessment, unless the law provides a machinery to assess the erstwhile Hindu undivided family by enabling the assessment proceedings to be initiated or continued against a proper successor. Section 19 is one such provision which enables the initiation of proceedings against the legal representatives of the deceased person who was liable to pay the tax under the Act. Sections 19A, 20 and 21 are also enacted to provide for certain similar contingencies. But, nowhere is a provision found in the Act enabling the Assessing Officer to make an order of assessment against the person who succeeded to the wealth of an erstwhile Hindu undivided family which was in existence on the date of the valuation date, but ceased to exist by the time the order of assessment is made, the said cessation being due to natural causes as happened in the instant case. Section 20 covers an entirely different field wherein the Hindu undivided family ceases to exist by act of parties."

15. The first respondent has also distinguished the decision of this court in the case of CWT v. C. E. Narayana [1992] 193 ITR 41 on the ground that in the said case on the date of filing of the return the Hindu undivided family was in existence and the same ceased to exist at the time of passing an order of assessment, which is not the position in the present case. I am of the view whether the Hindu undivided family was in existence on the date of filing of the return and ceased to be in existence only on the date of passing of order of assessment or the Hindu undivided family was not in existence both on the date of filing of the return and passing of the order, does not make any difference. The principle is that in the absence of any machinery provided under the Act to assess the erstwhile Hindu undivided family, it is not possible to assess either the erstwhile Hindu undivided family or a member of the erstwhile Hindu undivided family. Since, admittedly, the Hindu undivided family was not in existence both on the date of filing of the return and also on the date of issue of the intimations, which are impugned in these petitions, which position was made clear in the note given to the statement filed along with the return, the first respondent ought not to have issued the intimations to the petitioner assessing the petitioner as an Hindu undivided family. Under these circumstances, the first respondent pursuant to the applications filed by the petitioner under section 154 of the Act ought to have rectified the mistake that had crept in which was apparent from the records. The conclusion I have reached above shows that the intimations issued which are impugned in these petitions were erroneous in law and therefore I am of the view that the first respondent ought to have exercised the power conferred on him under section 154 and rectified the error. Since an intimation is issued under section 143(1)(a) of the Act without hearing the assessee and issuing notice to him, when an apparent error is brought to the notice of the assessing authority, the concerned authority is required to rectify the error. That is the object and purpose behind section 154 of the Act."

20. In the light of the aforesaid discussions and by respectfully relying on the decision of the Hon'ble jurisdictional Karnataka High Court in the case of T. Govindappa Setty V. Income Tax Officer (1998) 231 ITR 892 (Karn-HC) , we are also of the opinion

that as no Hindu Undivided Family existed on the date of the filing the return as well as on the date of initiation of the Reassessment proceedings and in the absence of any machinery provided under the Act to assess the erstwhile HUF, it is not possible to assess either the erstwhile HUF or a member of the erstwhile HUF and accordingly the assessment order passed by the Ld.AO is illegal, bad in law & without jurisdiction.

In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 26th June, 2024.

Sd/-	Sd/-
(CHANDRA POOJARI)	(KESHAV DUBEY)
Accountant Member	Judicial Member

Bangalore,
Dated, the 26th June, 2024.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore