IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.603/Bang/2015
Assessment year : 2005-06

Shri S. Krishnappa (HUF), No.74, Bhuvaneshwari Nagar, C. V. Raman Nagar Post, Bengaluru – 560 093. **PAN : AAPHS 8136 L**	Vs.	Deputy Commissioner of Income Tax, Circle – 7(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. A. Shankar, Sr. Counsel
Revenue by	:	Shri. Muzaffar Hussain, CIT (DR)(ITAT), Bengaluru

Date of hearing	:	04.02.2020
Date of Pronouncement	:	28.02.2020

O R D E R

Per A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of learned CIT(A)-4, Bengaluru, dated 20.01.2011 for the Assessment Year 2005-06.

2. In the course of hearing, learned AR of the assessee submitted list of dates and synopsis of 24 pages and in particular, our attention was drawn to page 10 of the said synopsis para 26 and it was submitted that as per ground Nos.3 and 4 raised by the assessee before the Tribunal, this is the issue raised by the assessee that the HUF was not in existence when the assessment proceedings have been conducted and the Assessment Order has been passed on HUF and therefore, the entire proceedings are rendered null and void and it should be held that the Assessment Order is bad in law on the facts and

circumstances of the present case. Reliance was placed by learned AR of the assessee on the judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Puttaranga Naika (HUF) in ITA No.2980-2985/2005 dated 13.09.2011, copy available on pages 311 to 338 of case law paper book. He pointed out that paras 11 to 13 of the judgment relevant wherein it was held that no assessment can be made on HUF if at the time of assessment, it has been divided because at that point of time, there was no undivided family in existence which could be taxed, even if it is found that when the income was received, the family was joint. Regarding the facts of present case, he pointed out that in para 9 on page 6 of his order, it is noted by learned CIT(A) that the assessee is HUF is divided by partition on 22.08.2009 but he survey action and notice under section 148 was initiated after the date of partition and hence, this was the claim of the assessee before learned CIT(A) that since HUF was not existing on these dates after partition, it cannot be assessed to tax. He submitted that this claim of the assessee was rejected by CIT(A) on this basis that the assessment year in question is Assessment Year 2005-06 being the year in which the HUF existed. He submitted that even in the facts of the present case, the judgment of the Hon'ble Karnataka High Court is squarely applicable and hence, the issue should be decided in favour of the assessee and it should be held that assessment order is bad in law.

3. Learned DR of the Revenue supported the order of CIT(A).

4. We have considered the rival submissions. First of all, we reproduce para 9 of the order of CIT(A) because the relevant facts are noted by learned CIT(A) in this para of his order. This para reads as under:

> *"9. The next issue raised by the assessee is that the HUF was disrupted by partition on 22.08.2009, but the survey action and notice*

u/s. 148 were initiated after the date of partition and hence, since the HUF was not existing on these dates after partition, it cannot be assessed to tax. I do not find any merit in this contention of the assessee as the assessment year in question is 240-5.06, the year in which the HUF existed. The income escaping assessment has to be taxed in this year which is prior to the date of partition in the hands of the HUF which is an existing entity and not disrupted. The notice u/s. 148 relates to the year in which the HUF existed. Various case laws relied upon by the appellant are not applicable to the case as the proposition from these Judgements relate to the fact that an assessment cannot be made on a disrupted HUF i.e. to say after the date of partition. Although, this plea does not form a part of the grounds of appeal, the same is rejected."

5. Now, we examine the applicability of the judgment of Hon'ble Karnataka High Court cited by learned AR of the assessee having been rendered in the case of CIT Vs. Puttaranga Naika (HUF) (supra). For ready reference, we reproduce paras 11 to 13 of this judgment from pages 325 to 331 of the case law paper book. These paras read as under:

11. The Division Bench of this Court in THE COMMISSIONER OF INCOME TAX vs. M/S. LAKKANNA & SONS reported in ITRC 57/1994, in answering the following substantial question of law:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee – HUF could not have been assessed to income-tax in 1980-1981 on account of the fact that there was a partition in the joint family subsequent to the last day of the accounting year?

II. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the provisions of Section 171 were not applicable to this case in as mirth as the assessed - HUF had not been assessed earlier to 1 980-1981?'

has held as under:

> *21. Sec4 of the Actisthechargingprovision. It providesthatwhenany Central Ad enacts that income tax shall be charged for any assessment year at any rate, income tax at that rate shall be charged for that year in accordance with the provisions of the Income Tax Act, 1961, in respect of the total income of the previous year of every 'person'. Sea 2(31) of the Ad defines the meaning of the expression 'person, to mean, apart from others, Hindu Undivided Family (HUF) and is assessed to income tax as a distinct unit of assessment. Sea 171 of the Act provides for assessment after a partition of a Hindu Undivided Family. Sub, section (1) of Sea 171 of the Act applies only to a HUF, which has hitherto been assessed as undivided, by legal fiction provided in the sub-section for the purpose of the Ad continues to be a HUF and continues to be so assessed as such unless the come Tax Officer records by an order accepting partition. In the present case, prior to the assessment year 1980-1981, M/s Lakkanna and Sons — assessee was not assessed as a HUE it was only for the first time, by a letter dated 30.08.1980, the assessee had informed the Income Tax Officer, that there was a total partition of the HUF on 25.4.1980. The Income Tax Officer after enquiry and verification recognizes the partition on 2.1.1984 for the assessment year, but for the assessment year 1980-1981, proceeds to accept the return of income filed by the HUE by an order made on 28.11.1930. Before the assessment order was passed, the RUE was partitioned on 25.4.1 980. Therefore, when the assessment order was passed by the Income Tax Officer on 28.11.1990, the HUF was not in existence. Therefore, the procedure prescribed under Section 171 of the Act will have no application as the assessee was not hitherto assessed as HUF and so the legal fiction created under that Section to deem it as HUE would not arise, since there is no other provision to assess the HUF after partition. Alternatively, it can be said that in the present case, the undisputed fact is that the assessee had never been assessed as HUF prior to the assessment year 1980-1981. There was a partition in the family much prior to passing of the assessment order i.e., on 28.11.1980. The assessee infect by its letter dated 30.08.1980 had intimated the Income Tax Officer the factum of disruption of HUF on 25.7.1980. The HUF was not in existence on the date when the assessments were concluded by the Income Tax Officer accepting the return of income filed by the HUF on 24.7.1980. Therefore, the Income Tax Officer could not have assessed the assessee as HUF after the disruption of HUF status of the assessee since the HUF had not assessed in that status prior to the relevant assessment year.*

12. The rationale for the introduction of Section 2,5(A) in the Indian Income Tax Act. 1992 which corresponds to Section 171 of the Income Tax Act, the Apex Court in the case of LAKHMICHAND BAIJNATH vs. COMMISSOINER OF INCOME TAX reported in (1959) 35 ITR 416 (SC) at Pg 421 has held as under:

> *"When the assessee was an Undivided no assessment could be made thereon f at the time of the assessment it had become divided because at that point of time, there was no undivided family in existence which could be taxed, though when the income was received in the year of account the family was joint, nor could the individual members of the family be taxed in respect of such income as the same is exempt from tax under section 14(1) of the Act.' The result of these provisions was that a joint family which had become divided at the time of the assessment escaped tax altogether 7b remove this defect, section 254 enacted that until an order is made' under the sort, the family should be deemed to continue as an undivided family."*

13. From t1 aforesaid observation it is clear that the assessee is an undivided family No assessment can be made thereon if at the time of assessment it has become divided, because at that point of time there was no undivided family in existence which could be taxed, though when the income was received in the year of accounts the family was joined. In other words under the Income Tax Act, the definition of 'person' includes a HUF though it is not a legal entity or a juristic person. Section 4 of the Act is a charging section. The tax shall be assessed in respect of the total income of the previous year of every person. In the scheme of the Act, every person whose total income exceeds the maximum amount which is not chargeable to Income Tax shall furnish the return of his income before the date as provided under Section 139 of the Act When such return is filed, the assessment is done in accordance with the procedure prescribed under the Act. However, if no such return is filed by a person and the income has escaped assessment under Section 147, the Assessing Officer has been vested with the power to reopen the assessment. However, before embarking upon such reassessment, he shall Issue notice as contemplated under Section 148. It is only after hearing the person, the order of assessment could be made under Section 148. Therefore, under the scheme of the Act, an order of assessment could be passed against the person who is in existence on the day the order is passed."

6. From para 13 of this judgment as reproduced above, it comes out that it was held by Hon'ble Karnataka High Court that no assessment can be made on a HUF if at the time of assessment, it has become divided because at that

point of time, there was no undivided family in existence which could be taxed though when the income was received in the year of accounts, the family was joint. In the present case also, the Assessment Order is dated 31.012.2010 and as per the Assessment Order, survey under section 133A of the Income Tax Act, 1961 was carried out on 10.09.2009 and notice under section 148 of the IT Act, 1961 was issued and served on the assessee on 22.09.2009. As per para 9 reproduced from the order of CIT(A), it is noted by learned CIT(A) that HUF was disrupted by partition on 22.08.2009. Hence, it is seen from the facts of the present case that on 10.09.2009, when the survey action was conducted under section 133A of the IT Act and also on 22.09.2009 when notice under section 148 of the IT Act, 1961 was issued by the AO and on dated 31.12.2010 when the Assessment Order was passed by AO under section 143 r.w.s. 147 of the IT Act, 1961 for Assessment Year 2005-06, the HUF was not in existence because the same was already partitioned on 22.08.2009. This is the basis of the order of the learned CIT(A) that the Assessment Year involved is 2005-06 and at that point of time, HUF was in existence but as per the judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. CIT Vs. Puttaranga Naika (HUF) (supra), this situation is also considered and it is held that if on the date of assessment, the HUF is not in existence, then such HUF cannot be taxed even for an earlier year when the income was received and the HUF was in existence. Respectfully following this judgment of Hon'ble Karnataka High Court, we hold that the present Assessment Order is bad in law and the same is accordingly quashed.

7. In view of this decision, no other ground requires any adjudication.

8. In the result, assessee's appeal is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(BEENA PILLAI)	**(A.K. GARODIA)**
Judicial Member	**Accountant Member**

Bangalore,
Dated: 28th February, 2020.
/NS/*
Copy to:

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

By order
Assistant Registrar,
ITAT, Bangalore.