

An AOP can file appeal through any of its HUF members and not through any member of such HUF in individual capacity

Summary – The Lucknow ITAT in a recent case of Sudarshan Shashi Tushar (HUF), (the Assessee) held that where AOP consisted of a number of HUFs, appeal was to be filed by any of HUF as member of AOP or its Principal Officer, and not by any member of a HUF in his individual capacity.

Facts

- During the course of assessment proceeding in the case of SK & Sons (HUF). The Assessing Officer noticed that various returns in name of 7 HUFs were filed though there was only one adult member, one female member and two children in family of one S.K.J., an individual.
- SKJ claimed the existence of 7 HUFs in addition to SK & Sons (HUF). The existence of these HUFs were not considered be genuine by the Assessing Officer and he treated the entire income of these HUFs in the hands of SK & Sons against which an appeal was filed.
- The Commissioner (Appeals) had approved the view of the Assessing Officer with regard to genuineness of these HUFs and the Commissioner (Appeals) had treated these HUFs to be non-genuine and was of the view that assessment be framed in the hands of the AOP of all the HUFs and direction was accordingly given. The Commissioner ruled that no legal or valid HUF exists and these entities were nothing but association of persons.
- The Assessing Officer, accordingly, framed the assessment in the hands of the AOP of these 7 HUFs against which an appeal was filed before the Commissioner (Appeals) by 'SKJ' in his individual capacity and not on behalf of any of the HUF member of the AOP.
- The Commissioner (Appeals) had rejected the appeal solely on the ground that the appeal was not signed and filed by a competent person and it was filed by 'SKJ' in his individual capacity. The Commissioner (Appeals) held that the appeal was to be signed and verified by any member of the AOP or the principal officer thereof. The appeal was kept pending before the Commissioner (Appeals) for more than six years and various dates were fixed and the assessee did not make any effort to rectify the defects in the memo of appeal and the grounds of appeal by getting it signed by a competent person. Therefore, the Commissioner (Appeals) had rejected the appeal being not signed by a competent person.
- On appeal to the Tribunal:

Held

- As per rule 45 of the Rules, an appeal before the Commissioner along with the Form 35, grounds of appeal *etc.* are to be signed and verified by a person who is competent to file the return of income as per section 140. In case of an AOP, the appeal is to be signed and verified either by any member of the AOP or a principal officer thereof. Admittedly, the AOP assessed by the Assessing Officer

consists of the 7 members of HUF. Therefore, the appeal is to be signed and filed before the Commissioner (Appeals) by any of the aforesaid HUFs but it was signed and verified by 'SKJ' in his individual capacity. It is also evident from the order of the Commissioner (Appeals) that the appeal was kept pending before the Commissioner (Appeals) for more than six years and during that period this defect must have been pointed out to him but the assessee did not make any effort to remove the defect and the Commissioner (Appeals) finally rejected the appeal of the assessee being not signed by a competent person.

- Now again before the Tribunal, the Form 36 and the appeal is signed by 'SKJ' and not by any member HUF of the AOP. As per rule 47, the appeal before the Tribunal is to be signed by a person who is competent to file the return of income and in case of AOP the return is to be signed by any member of the AOP or a principal officer thereof. Therefore, the appeal before the Tribunal in case of the AOP is required to be filed by any member of the AOP or its principal officer. In the instant case, the member of the AOP are 7 HUFs, therefore, the appeal before the Tribunal should have been filed by anyone of the HUFs as member of the AOP or its principal officer but the Form 36 and appeal is not signed by any HUF member of the AOP. It is rather signed by 'SKJ' in his individual capacity who cannot be called competent for signing the appeal before the Tribunal.
- During the course of hearing of the appeal this defect was categorically pointed out to the assessee but he did not make any request or seek time for making necessary rectification in Form 36 or in the appeal by getting it signed by a competent person. When the assessee has not made any effort to remove the defect, noticed by the Tribunal during the hearing of the appeal, it can very well be presumed that before the Commissioner (Appeals) no efforts were made by the assessee for rectifying the defect despite pointing out to him by the Commissioner (Appeals). Moreover, when this appeal is not signed by a competent person, the same cannot be entertained and adjudicated. The judgments referred to by the assessee in support of his contention that liberal approach should be adopted while condoning the delay or allowing the assessee to rectify the defects pointed out in the appeal. There is no dispute in this regard but the assessee should be conscious about his rights and whenever the defects were pointed out he should immediately make efforts to rectify the same. In the instant case, the appeal was kept pending before the Commissioner (Appeals) for more than 6 years and no effort was made to rectify the defect. Similar is the position before the Tribunal where the appeal was listed for four dates and even during the course of hearing of the appeal, the similar defect was pointed out to the assessee but instead of rectifying the defect in the appeal, the assessee insisted for remanding the matter back to the Commissioner (Appeals). The effective order on the appeal can only be passed once it is admitted for hearing and the appeal is filed by a competent person. In the instant case when the appeal is not signed by a competent person, it cannot be admitted for hearing. Accordingly, the appeal is dismissed being not admitted as not signed by a competent person.
- In the result, both the appeals of the assessee are dismissed.