IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM
आयकरअपीलसं./ITA No.280/SRT/2018
(निर्धारणवर्ष / Assessment Year: (2013-14)
(Virtual Court Hearing)

Babubhai Arjanbhai Kanani (HUF), B-32, Laxman Nagar Society, L.H.Rad, Varchha, Surat – 395004.	**V s.**	The Deputy Commissioner of Income Tax, Circle-3(3), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AAIHB 1261 J**		
(Assessee)		**(Respondent)**

Assessee by : Shri Kiran K. Shah - CA
Respondent by : Ms.Anupama Singla – Sr.DR

सुनवाईकीतारीख/ Date of Hearing : 18/06/2021
घोषणाकीतारीख/Date of Pronouncement: 08/07/2021

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

By way of this appeal, the assessee has challenged correctness of the order dated 05.12.2017, passed by the learned CIT(A), in the matter of assessment under section 143(3) of the Income Tax Act 1961, for the assessment year 2013-14. Grievances raised by the assessee are as follows.

> *"1) The learned CIT (A) grossly erred in confirming the rejection of claim in respect of purchase of agricultural land against the LTCG eligible for deduction u/s.54B of the Act.*
>
> *2) The appellant reserves right to add, alter and withdraw of any grounds of appeal."*

2. Brief facts of the issue in dispute are stated as under. Assessee before us is Hindu Undivided Family [Babubhai Arjanbhai Kanani (HUF)] and during the year under consideration, it derived income from long term capital gain on sale of property. The assessee filed its return of income on 28.02.2014 declaring total income of Rs.75,34,230/-, for assessment year (A.Y.) 2013-14 including agriculture income to the tune of Rs.2,62,350/-. The return of income of the assessee was processed under section 143(1) of the Act. Later, the assessee`s case was selected for scrutiny

through CASS. The Notice under section 143(2) of the Act was issued to the asssessee on 03.09.2014 and assessing officer framed the assessment under section 143(3) of the Act on 22.01.2016. On verification of the details of sale and purchase of land, it was observed by Assessing Officer that assessee HUF has claimed exemption under section 54B of the Act to the tune of Rs.27,22,020/- in respect of purchase of land situated at Vihan, Block No.281. The Assessing Officer noted that the property has been registered in the name of coparcener namely, Vrushabh Babubhai Kanani, who is an individual. It was further noted by the Assessing Officer that the funds of HUF has been utilized, and the same was transferred from bank account of HUF to bank account of co-parcener. The assessee was therefore asked to explain as to why the exemption claimed u/s 54B of the Act at Rs.27,22,020/- should not be disallowed, as the property is not registered in the name of HUF.

3. In response to the above query of the assessing officer, the assessee, vide letter dated 22.01.2016 has submitted written submissions, which are reproduced below:

"With reference to your honour's show cause during personal hearing before your honour dated 22.01.2016 regarding disallowance of exemption of Rs. 27,22,022/- due to registered purchase deed being made on name of coparcener of HUF in place of HUF. In this regard we are herewith provide our detail explanation.

1. We submit that the purchase deed has been made on name of coparcener however, the property is in actual owned by HUF and same is duly shown in balance sheet of HUF.
2. Entire purchase consideration for agriculture land was paid by way of utilizing fund of HUF.
3. As per law and custom of hindu sucession Act, any property which is purchased out of fund or earning of HUF always remain under ownership of HUF and all members of HUF has right in that property. We are herewith producing judgment in the case of CIT vs. K. S. Subbiah Pillai HUF (1984) 147 ITR 87 (mad) pronounced by Madras High Court wherein it has been held that:

"It is one of the fundamental principles of Hindu law that property acquired by the Karta or a coparcener with the aid or assistance of Joint family assets, is impressed with the character of joint family property. To constitute self-acquired property in the hands of the karta or a coparcener, it should not have been acquired with the assistance, or aid of joint family property. In the above decision, the Division Bench, after referring to the various decisions of the Supreme Court on this aspect has observed as follows"

Further we submit that HUF is governed by Hindu Sucession Act and governed by custom and tradition of Joint hindu family where in whole family live together till partition and till date of partition, any property owned or acquired out of fund of joint family whether its registered on name of HUF or any member or coparcener of HUF, it remain property of HUF and all member have right over that property on partition. We rely on judgment of Delhi High Court where in civil case of Ms. Haria Kapur vs. Sh. Rakesh Kapur & Ors. CS (OS) 1353/2009 where in following were observed by honourable court:

Further we also want to quote here section 4 Benami Transactions (Prohibition) Act; 1988 reproduced hereunder for brevity:

"4 prohibition of the right to recover property held benami-(1) No. suit claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a claiming to be the real owner of such property. (2) No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or behalf of a person claiming to be the real owner of such property.

(3) Noting in this section shall apply-
(a) where the person in whose name of the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or
(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or whom he stands in such capacity".

Plain regarding of above clearly shows and accept the tradition of hindu laws that joint family property can be purchase on name of any member of HUF and real owner can claim right in that property on partition without any restriction of laws.

Further we rely on judgment of Lahore High Court in case of Sanwal Das vs. Kuremal and Ors. Reported in AIR 1928 Lohare 224 where in it was held that "in the case of a Joint Hindu Family, purchase of property in the name of one or other member of the family is immaterial. If once the family is proved to be joint, it is a matter of absolute indifference whether the name of one or the other member of the family appears in a particulars document".

Considering all above facts interpretation of legal statue, as per our bona-fide belief, we are eligible to claim Rs. 2722022/- u/s 54B and may please be allowed in our case as per law."

4. However, ld.Assessing Officer rejected the contention of the assessee and noted that purchase deed is in the name of coparcener but property is owned by HUF and duly shown in balance sheet. Entire purchase consideration for agriculture land was paid by utilizing fund of HUF. Even though the fund of HUF has been

utilized but the property is in the name of individuals and the fund appears to be in the form of loan to the individual in whose name the property has been purchased. The Assessing Officer also held that the Hindu Succession Act is not applicable in the present case as the property in question has been purchased in the name of individuals with their individual PAN. If the property has been purchased in the name of individual, the same can be sold only by that particular individual and not the karta or coparceners of HUF. Hence, the question of right over the property on partition does not arise. In view of the above facts, the submission of the assessee was rejected by Assessing Officer and the exemption claimed under section 54B of the Act to the tune of Rs.27,42,500/- was disallowed.

5. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the ld.CIT(A) who has confirmed the action of Assessing Officer:

6. Aggrieved by the order of the ld.CIT(A), the assessee is in appeal before this Tribunal.

7. Shri Kiran K. Shah, Learned Counsel for the assessee, appearing on behalf of the assessee, submits before us that property has been purchased by one of the members of HUF by utilizing the fund of HUF. Learned Counsel submits that the property was not purchased in the name of HUF but it was purchased in the name of member of the HUF. The Learned Counsel pleads that the property was purchased out of the value of agricultural land sold and further the same was accounted for in the books of HUF and, therefore, the condition of provisions of section 54B stands fulfilled. Thus, Ld.Counsel further pleads that merely because, property was purchased in the name of member of the HUF, the deduction under section 54B of the Act ought not to be disallowed.

8.On the other hand, Ms.Anupama Singla – Sr.DR, for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

9. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the ld.CIT(A) and other materials brought on record. We find that a key issue arises for our apt adjudication in the instant lis, is that whether property which was purchased out of the funds of the HUF and has been shown in the books of accounts of HUF and HUF is doing agricultural activities, and just merely because the property was registered in the name of co-parcerner of the HUF, makes the HUF ineligible to claim deduction under section 54B of the Act?

We note that Assessing Officer was of the view that individual is a different taxable entity as compared to HUF entity and therefore denied the deduction under section 54B of the Act. We note that in the instant case the purchase of property was out of the funds of the HUF and has been shown in the books of accounts of HUF. The HUF had shown agricultural income in the year when property was purchased and in the subsequent years. The agricultural income was not shown in the hands of individual, however, it is shown in the hands of HUF. The co-parcerner of the HUF may hold property on behalf of the HUF. We note that assessee purchased agricultural land out of the sale proceeds of the agricultural land sold and after that the assessee has claimed exemption under section 54B of the Income Tax Act to the tune of Rs.27,22,020/- in respect of purchase of land situated at Vidhan, Block No.281. We further note that funds had been utilised which pertains to HUF and the same was transferred from bank account of HUF to bank account of Individual. We note that as per Hindu Succession Act, property purchased out of HUF funds or earning of HUF always remained under ownership of HUF and all members of HUF has right in that property. Thus, in the instant assessee`s case, the fruit of the property is enjoyed by the HUF.

10. We note that section 54B of the Act provides exemption in respect of capital gain on transfer of land used for agricultural purposes. Sub-section 1 of section 54B states that subject to the provisions of sub-section (2), where the capital gain arises, from the transfer of a capital asset being land which, in the two years immediately

preceding the date on which the transfer took place, was being used by the assessee being an individual or his parent, or a Hindu undivided family, for agricultural purposes [(hereinafter referred to as the original asset)], and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45 of the Act. Therefore, it is abundantly clear that Hindu undivided family (HUF) may also sale agricultural land and purchase another agricultural land and claim exemption under section 54B of the Act. Thus, HUF is also an assessee under the Income Tax Act. However, HUF is an artificial person, like limited company. All the activities of a limited company are performed by its directors, likewise, all the activities of HUF are performed by its member of HUF. Therefore, the purchase of agricultural land or sale of agricultural land are to be done by members of HUF , on behalf of HUF. In the instant case the entire purchase consideration for agricultural land was paid by utilizing fund of HUF, therefore, agricultural land so purchased belongs to HUF. Just because the agricultural land was registered in the name of individual member of HUF, does not mean that it is not a property of HUF and the HUF can not claim exemption under section 54B of the Act. We note that Hon`ble High Court of Punjab and Haryana in the case of Gurnam Singh [2008] 170 Taxman 160 (Punjab & Haryana), held that the purchased land was being used by the assessee only for agricultural purpose and merely because in the sale deed his only son was also shown as co-owner, it did not make any difference because the purchased land was still being used by the assessee for agricultural purposes. It was not the case of the revenue that the said land was being used exclusively by his son. The findings of the Hon`ble Court is reproduced below:

"3. *Feeling aggrieved against the aforesaid order, the respondent filed an appeal before the Commissioner of Income-tax (Appeals), who vide his order dated 17-12-2002 allowed the same and set aside the action of the Assessing Officer in denying the deduction under section 54F of the act to the respondent. Against the said order, the revenue filed an appeal before the ITAT, who vide its order dated 24-4-2006 has dismissed the appeal, while observing as under :—*

> *"The issue before us revolves around allowability of deduction under sections 54B and 54F of the Act. The land in question was purchased by the assessee in the name*

of his son. The learned Assessing Officer disallowed the deduction on the ground that the land is in the name of the son of the assessee, so the deduction cannot be allowed, specially when the land was purchased by Sh. Gurnam Singh out of the sale proceeds of agricultural land and since Palwinder Singh was bachelor and was not having any independent source of income was dependent upon his father even for livelihood. The conclusion of the learned Assessing Officer is available on page 4 of the assessment order. Before coming to a conclusion, we are supposed to analyze section 54B which is applicable where the capital gains arise from the transfer of capital asset and was being used for agriculture purposes which was invested in the purchase of any other land and again being used for agricultural purposes. There is no dispute to the fact that the assessee sold his agricultural land and then purchased other agricultural land out of the sale proceeds and got registered some portion of the land in the name of his only son who was a bachelor at the relevant time. If the 'ikrarnama'/agreement is analyzed which is available at page 9 of the paper book, it clearly speaks that "The purchaser is at liberty to execute the sale deed in the name of any member of his family. He is also at liberty to execute as many as sale deeds as he desires...." If the contents of the 'ikrarnama'/agreement to sale is analyzed one undisputed fact is oozing out that the sale proceeds of the agricultural land were in fact used to purchase another agricultural land. Section 54B speaks about transfer of capital asset being land within a specified period and another land is purchased for agricultural purposes, then it shall be dealt with in accordance with the provision of this section. It is not the case of the revenue that the capital gain was not utilized by the assessee for the purchase of new asset before the date of furnishing the return of income under section 139. In fact, if the facts as detailed in the 'ikrarnama' are analyzed, the capital gains was utilized by the assessee for purchasing the new asset. Section 54B is applicable as per the provision of clause 2 of the section. The only dispute raised by the revenue is that the land was got registered in the name of his son. This fact is not disputed that the assessee was an old and illiterate person and never filed any return. At the same time, he was not having any other source of income also. It is not the case that the sale proceeds were used for any other purposes or beyond the stipulated period. This fact was also not disputed that the son of the assessee was bachelor and was not having any other source of income and was totally dependent upon his father. Undisputedly, the earlier land which was sold, also belonged to the assessee and the sale proceeds were also used for purchasing agricultural land. The possession of the said land was also taken by the assessee. The only objection raised by the revenue was that the said land was registered in the name of his son. In view of these facts, it cannot be said that the capital gains/sale proceed were in any way misused for any other purposes contrary to the provisions of law."

We have heard the counsel for the revenue and gone through the aforesaid impugned order. In our opinion, from the impugned order, no substantial question of law is arising for consideration of this Court as the ITAT while recording a pure finding of fact has dismissed the appeal of the revenue. Undisputedly, in this case the assessee had sold the agricultural land which was being used by him for agricultural purposes. Out of sale proceeds of the said sale, the assessee has purchased other piece of land (land in question) in his name and in the name of his only son, who was bachelor and dependent upon him, for being used for agricultural purposes within the stipulated time. Further, it is not the case of the revenue that from the sale proceeds of the agricultural land earlier owned by the assessee, the land in question was purchased for any other purpose than the agricultural purpose. Undisputedly, the purchased land is being used by the assessee only for agricultural

purpose and merely because in the sale deed his only son was also shown as co-owner, the ITAT has rightly come to the conclusion that it does not make any difference because the purchased land is being used by the assessee for agricultural purposes. It is not the case of the revenue that the said land is being used exclusively by his son. In our view, a pure finding of fact has been recorded by the ITAT which does not require any interference in this appeal."

11. On the similar facts, Hon`ble High Court of Rajasthan in the case of Laxmi Narayan, [2018] 89 taxmann.com 334 (Rajasthan) held that where assessee had purchased new agricultural land out of sale consideration of his agricultural land, assessee could not be denied deduction under section 54B merely because registered document of new land was executed in name of his wife. The findings of the Hon`ble Court is reproduced below:

*"**7.2** On the ground of investment made by the assessee in the name of his wife, in view of the decision of Delhi High Court in Sunbeam Auto Ltd and other judgments of different High Courts, the word used is assessee has to invest it is not specified that it is to be in the name of assessee.*

***7.3** It is true that the contentions which have been raised by the department is that the investment is made by the assessee in his own name but the legislature while using language has not used specific language with precision and the second reason is that view has also been taken by the Delhi High Court that it can be in the name of wife. In that view of the matter, the contention raised by the assessee is required to be accepted with regard to Section 54B regarding investment in tubewell and others. In our considered opinion, for the purpose of carrying on the agricultural activity, tubewell and other expenses are for betterment of land and therefore, it will be considered a part of investment in the land and same is required to be accepted.*

***7.4** In view of the above, all the issues are answered in favour of the assessee and against the department."*

12. Now coming to the assessee`s case under consideration, in the light of the above noted judicial precedents, we note that entire purchase consideration for agricultural land was paid by utilizing money of HUF. We note that Purchase Deed is in the name of the Coparcener (one of the HUF members). However, the property (land) is owned by HUF. The property (land) is shown in the Balance Sheet of HUF. The Co-parcerner of the HUF may hold property on behalf of the HUF. The HUF money was utilized to purchase the said agricultural land. The HUF is doing agricultural activities. For example, in case of a company, a property may be registered in the

name of the Director, because company is an artificial person which can not talk, walk and think, however, the Directors do all the activities on behalf of the Company, therefore, just because property is registered in the name of director does not mean that director is owner in substance. In substance, the Company will be treated as owner of the property. Likewise, HUF is also an artificial person which can not talk, walk and think, however, the Coparceners (member of HUF) do all the activities on behalf of the HUF. In substance, the HUF is owner of the said agricultural land though it is registered in the name of the Coparcener, as the HUF is enjoying all the fruits of the said agricultural land. Thus, the HUF is entitled to claim exemption/deduction under section 54B of the Act. Therefore, based on these factual position narrated above, we are not inclined to accept the contention of the ld CIT(A) and assessing officer in any manner and therefore the addition so made is deleted. Hence this ground of the assessee is allowed.

13. In the result, appeal of the assessee is allowed.

Order is pronounced at the time of hearing of appeal on 08/07/2021 in the Virtual Court of hearing.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Surat /दिनांक/ Date: 08/07/2021 /*sgr*

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

/ / TRUE COPY / /

Assistant Registrar/Sr. PS/PS
ITAT, Surat