

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No.628/Bang/2010
Assessment year : 2004-05

The Income Tax Officer,
Ward 8(2),
Bangalore. : APPELLANT

Vs.

Shri Ramesh Kumar (HUF),
No.365, 12th Cross,
5th Main, RMV Extension II Stage,
Bangalore. : RESPONDENT

Appellant by : Smt. Amritha Ranjan, Addl.CIT(DR)
Respondent by : Shri H.N. Khincha, C.A.

ORDER

Per A. Mohan Alankamony, Accountant Member

This appeal is filed by the Revenue aggrieved by the order of Id. CIT(Appeals) u/s. 143(3) of the I.T. Act in ITA No.118/W-9(8)/CIT(A)-II/06-07 dated 22.1.2010 for the A.Y. 2004-05.

2. The Revenue has raised four grounds in its appeal. However, the crux of the issue is granting of exemption u/s. 54 of the I.T. Act on the investment made in the name of one of the Member of the HUF, while as

the sale of the property was by the Karta of the HUF on whose name the property stood.

3. The assessee-HUF filed its return of income for the A.Y. 2004-05 on 28.12.2004 declaring an income of Rs.1,61,240. Initially the return was processed u/s. 143(1), however, the case was selected for scrutiny and notice u/s. 143(2) and 142(1) were issued and served. During the course of assessment proceedings, it was observed that the Kartha of the HUF, Shri Ramesh Kumar had sold a property at Gurgaon for Rs.18 lakhs. Subsequently, another property was purchased at National Games Village, Bangalore in the name of Mrs. Sandhya, W/o Shri Ramesh Kumar, the kartha of the HUF. The sale of the property was effected by canceling the allotment letter dated 8.6.1987 and re-allotted vide letter dated 29.3.2004 in respect of the Gurgaon property in the name of Shri Raghubir Singh. Ld. AO opined that for the purpose of claiming exemption u/s. 54 of the Act, the assessee should have brought another property in his own name as Kartha of HUF, subject to fulfillment of other conditions specified u/s. 54 of the Act. Reliance was placed in the case of ITO v. Prakash Thimmaji Dhanjodas (2002) 258 ITR (AT) 114 (Nag). It was held in this case that reinvestment for the purpose of claiming exemption u/s. 54F should be in assessee's own name. If the investment is made in the name of assessee's wife or son, the requirement of section 54F was held not to be satisfied. Though the above referred decision was rendered while dealing with exemption u/s. 54F, ld. AO was of the opinion that both the sections 54 and 54F deal with investment in residential property for the purpose of claiming exemptions

under the relevant sections and therefore the decision is applicable to the case on hand.

4. The assessee HUF, aggrieved by the order of the Id. AO, appealed to the Commissioner (Appeals). Ld. CIT(Appeals) made the following observations:

- (1) The appellant had filed its return of income for the A.Y. 2004-05, 2005-06 and 2006-07.
- (2) The property subsequently purchased in the National Games Village for which exemption is claimed was reflected in the balance sheet of the appellant-HUF.
- (3) The rent received from this property has been offered to tax in the name of the appellant-HUF.
- (4) The property tax has also been paid in the name of the appellant-HUF.
- (5) Smt. Sandhya Kumar, Wife of the Kartha of the HUF is also a member of the HUF on whose name the new asset is purchased.
- (6) Smt. Sandhya Kumar, is not individually benefited by the purchase of the property to the exclusion of the other members of the HUF.

Considering the above facts, Id. CIT(A) arrived at a conclusion that the AO is not legally correct in denying exemption u/s. 54F of the Act by placing reliance on the case law cited above. Ld. CIT(A) further distinguished that the facts of the case in hand is quite different from the facts on which the Id. AO had placed reliance. In that case, the purchase of the new asset by the

assessee was in the name of his son as the beneficial owner of the new asset. The asset was not a part of the HUF property.

5. Ld. DR vehemently argued supporting the order of the Id. AO. She also relied upon the case law cited by the Id. AO. She further contended the facts of the case law relied upon by the AO is identical to the facts of the case in hand and therefore prayed the order of the Id. AO to be restored.

6. Ld. AR forcefully argued that the property of a HUF could be held in the name of the Karta of the HUF or any member of the HUF. Therefore, property purchased in the name of any member of the HUF is eligible for claiming exemption under section 54 of the Act. He further reiterated that the member of the HUF on whose name the property is purchased does not derive any independent right on the property or its income. The property is jointly owned by the members of the HUF, therefore the disallowance made by the Id. AO is not justifiable and the Id. CIT(A) had judiciously granted relief to the appellant trust by granting exemption u/s. 54 of the Act.

7. We have heard the rival submissions and perused the materials available on record. It should be kept in mind that the Hindu Law does not recognize a joint Hindu family or coparcenery as a juristic personality capable of holding property and as an entity separate from the members of the family. The true position in law is that all the members of the HUF collectively own the property of the HUF by holding an equivalent interest. A HUF cannot sue or be sued in the joint family name and cannot convey the property held by it in its joint character. However, for the purpose of

Income Tax Act, the Hindu Undivided Family has a separate and distinctive status. Therefore, it is obvious that the property of the HUF stands in the name of the Karta of the HUF or in the name of the members of the HUF. A Karta of the HUF or a member of the HUF can hold a property on behalf of the HUF or in individual capacity as a beneficial owner. In the given case in hand the existence of HUF cannot be disputed. Shri Ramesh Kumar jointly with his wife and children constitute a valid HUF. The claim of Shri Ramesh Kumar, the Kartha of the HUF, that Gurgaon property held in his name belongs to the HUF cannot be disputed. Further, the appellant trust had filed its return of income and disclosed that the new asset purchased at National Games Village belongs to the HUF and thereby declared the income derived from this property in the hands of the HUF. All the property taxes were also paid by the HUF trust. In these circumstances, it could be only construed that the property though purchased in the name of a member of the HUF, belongs to the HUF. Therefore, the Id. CIT(Appeals) is right in allowing exemption u/s. 54 of the Act to the appellant trust. We uphold the order of the Id. CIT(Appeals).

8. In the result, the appeal of the revenue is dismissed.

Pronounced in the open court on this 29th day of October, 2010.

Sd/-

sd/-

(SMT. P. MADHAVI DEVI)
Judicial Member

(A. MOHAN ALANKAMONY)
Accountant Member

Bangalore,
Dated, the 29th October, 2010.

Ds/-

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.