आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT "**SMC**" BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

आ.अ.सं./ITA No.266/SRT/2022 (AY 2017-18)

(H*earing in Virtual Court)*

Ranjitbhai Dhayabhai Panchal, AT & P.O. Eru, Eru Char Rasta, Tal: Jalalpore, District. Navsari-396450 **PAN No: ADXPP 8781 D**	Vs	Income Tax Officer, Navsari Circle, Navsari-396445
अपीलार्थी/Appellant		**प्रत्यर्थी** /Respondent

निर्धारिती की ओर से /Assessee by	Shri Sujesh C Suratwala, C.A
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
सुनवाई की तारीख/Date of hearing	13.03.2023
उद्घोषणा की तारीख/Date of pronouncement	09.05.2023

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as "NFAC/Ld. CIT(A)"] dated 18.07.2022 for assessment year 2017-18, which in turn arises out assessment order passed by Income Tax Officer, Navsari Circle, / Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 08.12.2019. The assessee has raised the following grounds of appeal:-

"1. The Learned AO as well as the Learned CIT(A)/National Faceless Appeal Centre (NFAC) has erred in making addition

of Rs.18,00,000/- received as gift from assessee HUF which was exempted u/s 56(2)(VII) of the Act.

2. The Appellant craved leave to add, alter, delete, amend or rescind any of above grounds of appeal as and when necessary with the permission of ITAT."

2. Brief facts of the case are that assessee is an individual filed his income for assessment year 2017-18 on 02.03.2018 declaring total income at Rs.21,35,210/-. During the scrutiny assessment, the Assessing Officer noted that assessee has shown gift of Rs.18.00 lakh from Ranjibhai D. Panchal (HUF), wherein the assessee is a Karta (Manager) of such HUF. The Assessing Officer disallowed and added back the gift to the total income of assessee by taking view that HUF does not fall in the list of relative. Aggrieved by the additions in the assessment order, the assessee filed appeal before ld CIT(A). The appeal of assessee was migrated to NFAC, Delhi. The ld CIT(A) also confirmed the action order of assessing officer. Further aggrieved by the addition in the assessment order, the assessee filed appeal before NFAC/Ld. CIT(A).

3. I have heard the submission of Ld. Authorized Representative (Ld.AR) for the assessee and Ld. Senior

Departmental Representative (Sr DR) for the revenue and perused the materials available on record carefully. The Ld. AR for the assessee submits during the relevant financial year the assessee received a gift of Rs. 18.00 lacs from HUF, wherein the assessee is Karta. The assessing officer treated the said gift as income from other sources by taking view that HUF, in not included in the list of relatives as prescribed section 56(2)(vii)(e) of Income Tax Act. The ld AR for the assessee submits that HUF is not different than the family members, thus, gift received form HUF should also be considered as exempt. The assessing officer relied on the decision of Ahmedabad Tribunal in Gyanchand M Bardia Vs ITO (2018) 93 taxmann.com 144 (Ahd-Trib). The assessee submitted the latest decision of Chandigarh Tribunal in Pankil Garg Vs PCIT (2019) 108 taxmann.com 337 (Chand-Trib) and earlier decision of Rajkot Tribunal in Vineet Kumar Raghavjibhai Bhalodia Vs ITO (2011) taxmann.com 384 (Rajkot), wherein the gift received from HUF was treated as exempt. The Ld. AR for the assessee submits that in both the aforesaid decisions, it is categorically held that HUF is an artificial person of family

members who falls within the definition of relative as prescribed under sub-clause (e) of clause (vii) of under section 56(2) of the Act.

4. The ld AR for the assessee submits that assessee has received gift from its own HUF, which is also exempt under section 10(2) of Income Tax Act, thus, the assess may be allowed relief on alternative submissions.

5. On the other hand, Ld. Sr-DR for the Revenue submits that all the submissions and the case law relied by Ld. AR for the assessee has been considered by NFAC/Ld. CIT(A) while confirming the order of Assessing Officer. The Legislature while giving the definition of relative has not included "HUF" in the definition of relative.

6. I have considered the rival submission of both the parties and have gone through the order of lower authorities carefully. I find that the Assessing Officer as well as NFAC/Ld. CIT(A) added the amount of gift to the total income of assessee by holding that HUF does not fall within the categorical of relative as prescribed under section 56(2)(VII) of the Act. The assessing officer while making addition also relied on the decision of Tribunal in

Gyanchand M Bardia Vs ITO (supra), on the contrary, the ld AR for the assessee vehemently relied on the decision of Rajkot Tribunal in Vineetkumar Raghavjibhai VS ITO(supra) Chandigarh Tribunal in Pankil Garg Vs PCIT(supra).

7. I find that double bench of Ahmedabad Tribunal in Gyanchand M Bardia Vs ITO (supra) while confirming the addition of gift from HUF, has not considered the provisions of section 10(2) of the Act. However, in the latest decision the division bench of Chandigarh Tribunal in Pankil Garg Vs ITO (supra) while considering the facts that whether the provision of section 56(2)(vii) are not attracted in case of individual, who receive sum from HUF and after considering similar objection of the revenue held that the property of HUF neither can be said to belong to third party nor can be said to be in 'corporate entity' , rather same is property of the members of the family, because share of each of the individual member in the property or income of HUF is not determine, hence, the family as such, is treated as separate entity for the purpose of taxation. HUF is otherwise not recognise as a separate juristic person

distinct from who constitute it. A member of HUF has pre-existing right in the family property.

8. I find that the division bench in the above case also considered the provisions of section 10(2) of the Act and noted that any sum received by an individual, as a member of 'HUF', which has been paid out of the income of the family or out of the income of the estate of the family is not exigible to taxation. The said exemption has been given on the pattern of a partnership firm to avoid double taxation of the same amount. In the case of partnership firm, when the partnership firm has been assessed to tax separately, then, the share of profit received by an individual person is not taxable. If a member does not opt to receive his share out of the profits of the firm and opts that the same be added towards his capital in the firm, even then, when the said partner either on dissolution of the firm or otherwise receives back his capital, the said capital is not taxable as an income of the partner, rather, the same is taken as a capital receipt. However, in the case of 'HUF', or to say in the strict sense in case of 'coparcenary', the individual

members receive their share on partition. However, during the subsisting coparcenary or to say broadly 'HUF', no member is entitled to receive any definite share out of the income of the 'HUF'. It is left to the prudence and wisdom of the manager who has to manage the affairs of the 'HUF', he may spend the money or property of the 'HUF' in the case of a need of a member, such as on the marriage of a unmarried female member or in case of certain treatment of any disease of the member or in case of educational needs of any children in the 'HUF'. The amount spent may be more than that the member may have gotten on the partition of the 'HUF'. The Karta of the 'HUF', even can gift the 'HUF' property for pious purpose and even he can contract a debt for the legal necessity and for family purposes and can bind the other members to the extent of their interest in the family property. Thus, in view of the above factual and legal discussion and respectfully following the decision in Pankil Garg Vs ITO (supra) I direct the assessing officer to delete the addition of Rs. 18.00 lacs under section 56(2)(vii). In the result, the ground of appeal raised by the assessee is allowed.

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

Order announced in the open court on 09/05/2023.

Sd/-
(PAWAN SINGH)
[न्यायिक सदस्य JUDICIAL MEMBER]

सूरत /Surat, Dated: 09/05/2023
Dkp. Out Sourcing Sr.P.S

Copy to:
1. Appellant-
2. Respondent-
3. CIT
4. DR
5. Guard File

By order

// True Copy //

Senior Private Secretary/ Private Secretary/Assistant Registrar, ITAT, Surat