**In the Income-Tax Appellate Tribunal,**
**Agra Bench, Agra**

**Before : Shri Laliet Kumar, Judicial Member And**
**Dr. Mitha Lal Meena, Accountant Member**

**ITA No.275/Agr/2016**
**Assessment Year 2012-13**

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| **Shri Sitaram Pahariya (HUF)**<br>**163, Daru Bhondela**<br>**Jhansi (U.P.)**<br>**PAN: AAYHS3794P**<br>**(Appellant)** | **V.S.** | **I.T.O – Ward 6(3)**<br>**Agra**<br><br>**(Respondent)** |

| | |
|---|---|
| **Appellant by** | **None** |
| **Respondent by** | **Sh. Sunil Bajpai, CIT, DR** |

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| **Date of Hearing** | **24.05.2021** |
| **Date of Pronouncement** | **31.05.2021** |

**ORDER**

**Per Laliet Kumar, J.M.**

**Present appeal was filed by the assessee feeling aggrieved by the order passed by the Commissioner appeal, whereby the relief sought by the assessee under section 54B was denied to the assessee. The grounds raised by the assessee before us are as under:**

1 **That the order passed by the learned commissioner of income tax (Appeals-2), Agra is based baseless facts, erroneous in law and against the natural justice which seems arbitrary and unjustified.**

2 The learned assessing officer has erred in law and in facts while disallowing the exemption u/s 54B amounting to Rs. 36,39,000/-as he does not consider the material available on record of the appellant which seems arbitrary, unjustified and against the natural justice.

3 The appellant can amend or elucidated the ground of appeal at the time of hearing of appeal.

**Brief facts**

**The Ld. Commissioner of appeal had captured the brief facts of the case in the order impugned before us in the following manner:**

**"Briefly stated, the appellant (HUF) had filed its return of income declaring income at NIL with the department on 03.08.2013. During the assessment stage, while examining the assessee's claim of capital gain, the AO had noted that the assessee has declared Nil income under the head capital gains on sale of property, whereas as per the examination of the sale deed conducted by the AO, the AO while recording his factual findings had come a finding that there was a positive capital gain instead of the NIL capital gain which was shown by the assessee as per the following details:**

| | | |
|---|---|---|
| Sale Consideration | | 1,05,00,000/ |
| Sales consideration as per Circle rates (SOC) | | 2,45,43,000/ |
| Cost of acquisition 27245.2609x90 | 24,52,074/ | |
| Less: Indexed cost of acquisition | | 1,92,48,780/ |

| | | |
|---|---|---|
| (24,52,07 4x785/100) | | |
| Capital gains | | 52,94,219/ |
| (on purchase of agricultural lands | | 36,39,000/ |
| Balance | | 16,55,219 |
| Less: Exemption u/s 54F (on purchase of land and construction against a residential house) | | 28,74,000/ |
| Deduction u/s 54EC | | 21,00,000/ |
| Net capital gains | | Nil |

The AO while taking due cognizance of the dates on which the assessee had purchased the land in question and which had material effect on the indexed cost of acquisition and the capital gain as such, the AO worked out the assessee's capital gain of Rs.54,92,652/- on the basis of the as per the following working

| | | |
|---|---|---|
| Sale Consideration | | 1,05,00,000 |
| Sales consideration as per Circle | | 2,45,43,000 |
| Less: Indexed cost of acquisition. | | 1,69,50,348 |

| | | |
|---|---|---|
| (1.092/10000=10920 Sq. M)<br>(8172x10000 = 16340 Sq. M)<br>(1) 10920x90x785/100 =77,<br>(2) 16340x90x785/125 =92,35,368<br>(7714980 + 9235368 = 16950348) | | |
| Balance | | 75,92,652/ |
| Deduction u/s 54EC | | 21,00,000/ |

| | | |
|---|---|---|
| **Net capital aains** | | **54,92,652/** |

**The AO, while appreciating the pure factual aspect of the assessee's claim, thus varied the indexed cost of acquisition, denied exemption claimed under section 54B and section 54F which resulted into computation of income chargeable under the head 'Capital gains' at Rs.54,92,652/-. Besides the AO vide his order has also disallowed the assessee's claim of deduction uls 54F of the Act amounting to Rs.17,75,000/- and also the assessee's claim of deduction u/s 54B amounting to Rs.36,39,000/-.**

**As aggrieved from the AO's order, the appellant while challenging the AO' order has in total taken 4 ground of appeal as reproduced above. Ground No. 2 as raised by the appellant is regarding the capital gain of Rs.54,92,652/-. It is considered expedient to take up this ground of appeal first before proceeding further to adjudicate Ground No. 1 which concerns assesse's claim of deduction u/s 54 of the Act. "**

**3. Feeling aggrieved by the order passed by the assessing officer, the assessee preferred the appeal before the CIT(A). the CIT(A) had granted the partial relief to the assessee in respect to the ground raised by the assessee pertaining to the entitlement of the assessee under section 54F. the relevant portion of the order passed by the CIT(A dealing with 54F is as under:**

**":5.5 I have considered the facts of the case, the submissions as made by the Ld. AR of the appellant and have perused the AO's as well on this issue with reference to relevant facts on record. The appellant has claimed deduction under section 54F against capital gains on sale of land on the premise that it had constructed residential house by purchasing land for Rs.10,99,000/- and had spent Rs.17,75,000/- in raising construction thereon. As regards the plot**

of the land, the same was undisputedly purchased on 16.06.2012. In support of the expenses made towards construction, at the assessment stage, the assessee had furnished before the AO a valuation report dated 07.08.2014 indicating cost of construction at Rs.17,46,000. However the AO has disallowed the assessee's claim on the main ground that investment in construction of house was made after the due date of filing of return as prescribed under section 139(1) and the assessee did not keep the amount in capital gain account scheme. The other grounds on which the AO had proceeded to make the impugned disallowance include that valuation report was not reliable and no details regarding investment in construction of house were furnished. As noted above, the appellant furnished copies of certificates and agreement by contractor and also the photographs of house during the course of appellate proceedings which were forwarded to the AO for his comments. The AO states that valuation report was sketchy and not in proper form and period mentioned therein is 2012-13 which mean that period of construction fell after the due date of filing of return. It is further submitted by the AO that sources of investment has not been explained by the assesse. The AO has however, not commented in respect of decisions cited by Ld. AR in support of his claim that if investment is made within period allowed by section 139(4), then even if the amount is not parked in an account under Capital gain account scheme, deduction under section 54F cannot be denied. In my opinion, so far the objections of the AO regarding sketchy valuation report and sources of investments are concerned, it is undeniable fact that valuation report was furnished by the assessee during the course of assessment proceedings estimating cost of construction on fixed rates. If the rates and valuation report did not appear to be reliable, the AO could have been got it verified by marking field enquiries by through Inspector of his office and besides, he would have called the technical person submitting the valuation report for examination or even by referring the matter to the valuation cell. At the same time, the however sketchy the valuation report might have appeared to the AO, that would not mean that house was not constructed. The sources of investments which undisputedly were made during financial year 2012-13 were also not relevant. It may be noted that so far investment in purchase of land is concerned, it was made within time allowed under section 139(1). Thus, the important question that arises is whether the investments made after due date of filing of return of income can be considered for allowing deduction under section 54F without making deposits in an account under Capital gains account scheme. The case laws cited by the appellant in this regard, as reproduced above, are relevant and on the basis of same, the

**assessee is entitled for relief. Even in the undernoted cases, similar view has been taken by Hon'ble judicial authorities:**

**i) Ni pun Mehrotra vs. ACIT reported as (2008) 110 ITD 520 (Bang.)**

**ii) CIT vs. Rajesh Kumar Jalan reported as (2006) 286 ITR 274 (Gau).**

**iii) ITO VS. Sapna Dimri reported as (2012) 50SOT 96 (Delhi)**

**iv) ITO vs. R. Srinivas reported as (2015) 155 ITD 1066 (Bang -Trib)**

**v) CIT vs. Jagriti Aggarwal reported as (2011) 339 ITR 61 O (P&H)**

**Thus in view of the foregoing, the addition on account of disallowance of assessee's claim of deduction u/s 54F is not justified and the same is therefore deleted. Accordingly, this ground of assessee is allowed. ”**

**4. However, the CIT(A) was not convinced with the second ground caused by the assessee pertaining to section 54B of the Act. The finding recorded by the first appellate authority were as under**

**“6.3 I have considered the facts of the case, the submissions as made by the Ld. AR of the appellant and have perused the AO's as well on this issue with reference to relevant facts on record. The AO has denied the assessee's claim of deduction u/s 54B on the basis that said deduction is not admissible for assessment year 2012-13 in the case of an assessee being an HUF. Whereas the Ld. AR for the appellant has relied upon a decision rendered by the Hon'ble ITAT Delhi. However, I find that the Hon'ble Madras High Court in the case of CIT vs. G.K. Deverajulu _reported as (1991) 56 taxmann 85 (Mad.) , has clearly distinguished the issue by observing as under:.¬**

**"In view of the aforesaid observations of the Supreme Court, the word 'assessee' occurring in section54B can a/so be interpreted in such a manner as to accord with the context and subject of its usage. The words 'assessee or a parent of his' occurring in section54B, in the context in which the word 'assessee'**

has been used and from the meaning of the words associated with it, would appear to us to clearly indicate that only an 'individual assessee' has been contemplated and not any other entity of assessment. No doubt under the provisions of the Act, a HUF is a distinct taxable entity for purposes of the Act, apart from the individual members constituting it. Even so, if in the place of the word 'assessee' occurring in section54B the words 'Hindu undivided family' are substituted and the section is read, it will lead to absurd results. On the other hand, if, for the word 'assessee', one class of assessees, Viz., an individual is substituted and the section is read, then, section54B makes sensible reading. In the former case, the provision would read 'used by a Hindu undivided family or a parent of his', while, in the latter, it would read as 'used by an individual or a parent of his'. It is difficult to conceive of a parent of or for a HUF or the user by such a parent of a HUF. Further, the use of the expression 'by a parent of his' occurring in section54B indicates that in order to claim benefits there under, the user must be by an assessee, who has a parent, or, a parent of his. That would mean user only by such an assessee, as has a parent, or, user by a parent of the assessee. The user 'by his parent' contemplated and the word 'his' employed, can have reference only to a living person like an individual and not to an entity or person like HUF. The user by the parent, which would also qualify for claiming the benefit of section54B would be inapplicable to a case, where the assessee is one other than an individual. In other words, when the meaning of the word 'assessee' used is ascertained from the meaning of the words associated with it, it is clear from the company the word 'assessee' had kept that what had been contemplated is only an individual and not a HUF. We may also observe that the reasoning of the Tribunal, in this case, is based upon an interpretation of section 54 and the words 'used by the assessee or a parent of his mainly for the purpose of his own or parent's own residence' had been interpreted as contemplating only the case of an assessee, who is an individual and not a HUF or a firm vide Rowji Sojpalv. CIT [1957] 31 /TR 721 (Bom.), KI Viswambharan & Bros. v. CIT [1973] 91 /TR 588 (Ker.) (FB) and Shrigopal Rameshwardas vs. Addi. CIT [1979] 119 /TR 980 (MP). We are relieved of the necessity of making a detailed reference

to those cases, as they had arisen under section 12B(4) of the Indian Income-tax Act, 1922, and section 54, where, the language employed is different from that found in section54B. It would also be pertinent to point. out that by section 19 of the Finance Act, 1987, in section 54(1) a HUF has also been included. The legislative change thus brought about is also an indication that what had been contemplated by 'assessee' under section 54(1) was not a HUF but only an individual. While a change had been brought in section 54(1), section54B had been left intact. This, in our view, also clearly indicates that though the Parliament was fully alive to the need for including a HUF within the scope of section 54(1) for some reasons, it had not thought it fit to do so in a case falling under section54B. Thus, on a careful consideration of the words employed and interpreting the words in the context in which they have been used and their collocation, we hold that the word 'assessee' used in section54B, would be applicable only to the case of an 'individual' and would not take in a HUF."

6.4 Similar view was taken by Madras High Court in the case of CIT_vs._R_Vay Kumar reported as (1995) 214 ITR 483 (Mad).

6.5 It is further relevant to refer to the Notes on clauses of Finance Bill, 2012, which clearly say that amendment in section 548 had to be with prospective effect. Said note reads as under:-

"Clause 18 of the Bill seeks to amend section54B of the Income tax Act relating to capital gain on transfer of land used for agricultural purposes not to be charged in certain cases.

The existing provisions contained in sub- section (1) of the aforesaid section54B provide that if an assessee transfers land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his for agricultural purposes, giving rise to capital gain and purchases any other land for being used for agricultural purposes, within two years after the date of such transfer, the capital gain is exempt to the extent such gain has been utilized for the aforesaid purpose.

**It is proposed to amend the aforesaid sub- section so as to extend the benefit of exemption to the assessee being a Hindu undivided family.**

**This amendment will take effect from 1st April, 2013 and will, accordingly, apply in relation to the assessment year 2013-2014 and subsequent assessment years.**

**6.6 With respect, it is pertinent to say in the decision of Hon'ble 'F' Bench of ITAT Delhi in the case of K.S. Jain& Sons (HUF) vs. Income Tax Officer, Ward-I, Gurgoan (supra), which is cited by the Ld. AR for the appellant, though the aforementioned decisions of Hon'ble Madras High Court (supra) have been referred, however the same have been distinguished by the Hon'ble ITAT for the reason that the said cases pertained to section 54(1) and not section 548. With due respect, the quoted text from the decision of Hon'ble Madras High Court would show that Hon'ble Court was clearly concerned with section 54B and hence the decision of Delhi Tribunal cannot be read in preference to the decision of Hon'ble Madras High Court where it has been clearly held that deduction under section 54B is not admissible to HUF. Further the Hon'ble ITAT Delhi, Circuit Bench at Meerut vide its order in the case of Ashwini Kumar & Sons HUF Vs. /TO Ward-1(1) Meerut /TA No. 5521 I Del. I 2015 A. Y. 2012-13 dated 15.03.2016, has also observed that the decision in the case of K. S. Jain & Sons HUF vs. /TO 173 Tax man 114 (Delhi) has been rendered on the incorrect facts laid before the coordinate. bench. It is only from assessment year 2013-14 that an assessee HUF has been entitled for such deduction and since the matter under consideration relates to assessment year 2012-13, deduction under section 54B cannot be allowed to it. Accordingly the AO's action in denying deduction u/s 548 to the assessee is found justified and the same is therefore sustained 2nd confirmed. Thus this ground of assessee is dismissed. ”**

**5. Feeling aggrieved by the order passed by the Commissioner appeal, the assessee is in appeal before us for the ground mentioned hereinabove. We may mention that during the course of hearing none appear on behalf of the assessee**

**at the time of hearing, further even before, the assessee has not appeared before us despite to service of the notice. As the matter involved, is primarily , pertaining to the scope and ambit of insertion made in section 54B wef 1.4.2013, whereby it was mentioned "the assessee being any individual or his parent or a Hindu undivided family". Prior to the introduction of the above said, section 54 B was only referring to "the assessee or his parent" . Therefore we have heard the the Ld.DR for the revenue , and have decided to hear the above said matter..**

**6. The DR for the revenue has drawn our attention, to the order passed by the assessing officer, wherein the assessing officer in paragraph 6 had mentioned that the assessee agreed for not taking the benefit of 54B, as in the assessee opinion it was not applicable to the assessee, however subsequently the assessee filed written submission and sought to benefit of the newly inserted provision whereby the scope of 54B was , extended even to Hindu undivided family also. It was submitted that the 54B, as available on the date of assessment year under consideration would be applicable and not the subsequent provision as brought into the statute with effect from 1 April 2013. He relied upon the decision of Madras High Court, which was also relied upon by the Commissioner appeal while rejecting the grounds of the assessee.**

**7. We have considered the rival contention of the parties and perused the material available on record, including the judgments cited at bar during the course of hearing by both the parties. The revenue had relied upon the decision rendered in the case of R. Vijayakumar* 1995] 214 ITR 483 (Madras), wherein the High Court for the assessment year 1975 – 76 has held as under**

**"The assessee is a Hindu undivided family of which Sri Vijayakumar is the karta. It sold agricultural lands situate in Krishnarayapuram within the Coimbatore municipal limits on August 3, 1974, for Rs. 2,25,000. The sale deed was registered on August 14, 1974. The assessee also**

**purchased agricultural lands situated in Kalikkanaickenpalayam for Rs. 2,35,000 under a sale deed dated July 10,1975. For the assessment year 1975-76, the assessee filed a return disclosing an income of Rs. 12,375. In doing so, it has no1 offered the gains arising from the sale of agricultural lands for tax.**
**The Income-tax Officer held, in view of the provision contained in section 54B of the Income-tax Act, the Hindu undivided family is not entitled to the exemption. However, on appeal, the Appellate Assistant Commissioner allowed the exemption claimed by the assessee. On further appeal, the Appellate Tribunal concurred with the view taken by the Appellate Assistant Commissioner.**

**Learned standing counsel for the Department brought to our notice a decision of the Madras High Court in CIT v. G.K. Devarajulu [1991] 191 ITR 211, wherein it is clearly held that the exemption under section 54B is not available to the Hindu undivided family, but is available only to an individual. In view of the abovesaid decision of this High Court cited supra, the order passed by the Tribunal is not sustainable. Accordingly, we answer the question referred to us in the negative and in favour of the Department. No costs."**

**8. Before we go to the legal question raised in the present appeal we would like to record certain undisputed facts in the present appeal. It is not disputed by the revenue that the assessee sold off the immovable property/urban agricultural land S at on 7.10. 2011. The property was transferred through Rajender Kumar Gupta and Sanjay Gupta POA holders on behalf of Sita Ram Pahariya . The assessee has claimed exemption under section 54F for an amount of Rs 36,39, 000/- as the assessee had purchased agricultural land. The lower authorities have denied the benefit of section 54F, as the assessee is HUF hence it does not fulfill the requirement under section 54B of the ACT.**

**9. The assessee and person has been defined under the income tax act as under:**

**Section 2(6) "assessee"[23] means a person by whom [24][any tax] or any other sum of money is payable under this Act, and includes—**

**(a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income [25][or assessment of fringe benefits] or of the income of any**

other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person ;

(b) every person who is deemed to be an assessee under any provision of this Act ;

(c) every person who is deemed to be an assessee in default under any provision of this Act ;

(31) "person"[66] includes—

(i) an individual[66],

(ii) a Hindu undivided family[66],

(iii) a company,

(iv) a firm[67],

(v) an association of persons[67] or a body of individuals[67], whether incorporated or not, (vi) a local authority, and

(vii) every artificial juridical person, not falling within any of the preceding sub-clauses.

[68][ Explanation.—For the purposes of this clause, an association of persons or a body of individuals or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;]

## 10. Section 54 B was provided as under during the relevant assessment year:

[Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases.

54B. 34[(1)] 35[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 or a parent of his] for agricultural purposes 36[(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, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

(i) if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be nil; or

**(ii) 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; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced, by the amount of the capital gain.]**

**37[(2) The amount of the capital gain which is not utilised by the assessee for the purchase of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme38 which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :**

**Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,—**

**(i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires; and**

**(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.**

**11. The bare reading of section 54B,( prior to amendment ) make it abundantly clear that the benefit of section 54 are available to assessee or a parents of his. However, the assessee has been defined in section 2(7) means every person in respect of whom any proceeding under this Act has been taken for the assessment of his income. The person has been defined under section 2(31) which include an individual, Hindu Undivided family etc . The conjoined reading of the above said provisions make it abundantly clear that an individual , Hindu undivided family etc is a person which is subjected to proceedings under the income tax act for the assessment of income and is therefore an assessee within the meaning of section 2(7) of the Act.**

**12. As the Hindu undivided family, can be an assessee for the purposes of the Income Tax Act, Therefore the assessee used in section 54 B, can be interpreted to mean, even the Hindu undivided family beside being an individual, etc would fell within the realm of assessee used in this provision, as and when context so required. Both i.e an individual assessee and HUF can be used to represent assessee in isolation in this provision depending upon the facts of the case. However the Hon'ble HC had pointed out some absurdity which would result in permitting reading of HUF as against assessee and had only restricted it to an individual assessee only. In our view, ratio laid down by the HC had been subsequently expanded and clarified by the subsequent amendment brought in by the Finance Act 2013, whereby the scope of section 54B had been clarified to include the assessee being an individual or his parent, or a Hindu undivided family. Beside that there are contrary views of various other authorities .Thus the controversy had been put to rest by the subsequent amendment of 2013 in section 54B, by the finance Act 2013, whereby even HUF was found to be entitle to take the benefit of 54B.**

## 14. Section 54B now provides as under (after 1.4.2013)

**Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases.**

**[74]54B. [75][(1)] [76][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 [77][the assessee being an individual or his parent, or a Hindu undivided family] for agricultural purposes [78][(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, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—**

**(i) if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the**

previous year; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be nil; or

(ii) 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; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced, by the amount of the capital gain.]

79[(2) The amount of the capital gain which is not utilised by the assessee for the purchase of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme 80 which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

Provided that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase of the new asset within the period specified in sub-section (1), then,—

(i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of two years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid

**15. In our considered opinion, the Hindu undivided family, entitled to the benefit of 54B, even prior to insertion of "the assessee being an individual or his parent, or a Hindu undivided family" by the finance act 2013. In our view the assessee is a person subjected to tax under the income tax act. And the person includes even the individual as well as the Hindu undivided family. Therefore, the benefit of provisions of 54B, cannot be restricted to only individual assessee. Further we are of the opinion that the revenue is duty-bound to make out a clear case of debarring the HUF from availing the benefit of section 54F/54B, and the assessee cannot be denied the benefit merely based on the interpretation. If the revenue wanted to tax, the assessee(HUF), then the statute should have provided specifically that the assessee used in 54B, is only restricted to living individual and is not applicable to**

**Hindu undivided family. Further the High Court had not considered that the individual assessee and HUF, can both be used as and when context so desires and it will not lead to any absurdity. In case the assessee is Hindu undivided family, the second part of section 54B i.e "of parents of his", would not applicable. However, in the case of individual assessee, the parents of the assessee fulfill criteria, then the benefit can be given. In our considered opinion harmonious interpretation is required to invoked so that the word used in the provisions would not become redundant or otiose . In our view , in case of doubt or confusion ,the benefit of any doubt in respect to taxability or exemption should be given to the assessee rather than to revenue. On facts of the present case , we find that the assessee within two years of sale of agricultural land, had invested the amount and purchase of land in accordance with the requirement of section 54B and is entitle to the benefit of 54B of the ACT.**

**16. We have also came across the recent decision of the coordinate bench in the matter of Sandeep Bhargava ("HUF') 2020] 117 taxmann.com 677 (Chandigarh - Trib.) wherein it was held as under :**

**8. We have heard the rival contentions of the Ld. Authorized Representatives of both the parties and have gone through the record. Admittedly, the issue relating to availability of deduction u/s 54B of the Act was duly examined by the Assessing Officer in the scrutiny assessment proceedings carried out u/s 143(3) of the Act and he after considering the claim of the assessee had allowed the same making some disallowances out of the impugned expenses etc. It is not a case where the Assessing Officer had not applied his mind to the issue under consideration. However, later on, the Assessing Officer confirmed the view that the deduction was not allowable to an 'HUF' for the assessment year 2012-13 as the same has been made available to a 'HUF' by Finance Act 2012 w.e.f. 1-4-2013. He, therefore, held that a mistake apparent on record had occurred in the assessment order dated 17-3-2015 passed u/s 143(3) of the Act.**

**However, we find from the provisions of section 54B of the Act, as applicable for assessment year 2012-13, that the same are loosely worded. The relevant part of the said provisions is reproduced as under:—**

**"54B. Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases.—[(1)] [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 or a parent of his 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, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—**

**(i). ** ** **" A perusal of the above provisions reveal that deduction u/s 54B of the Act is available —**

**(i) Where capital gain arises on transfer, of a capital asset being the land;**

**(ii) such land was being used for agricultural purposes by the assessee or a parent of his for the last two years, from the date of transfer of land ;**

**(iii) assessee has, within a period of 2 years after the date of transfer, purchased any other land for being used for agricultural purposes.**

**9. A perusal of the wording of the section reveals that deduction u/s 54B is available to an "assessee" if the land was used for agricultural purpose by the assessee or a parent of his. Our stress is on the word "assessee" which has been substituted with words "assessee being an individual" in the amended provisions. In the amended provision w.e.f. 1-4-2013, the relevant wording is "if the capital asset being a land used for agricultural purposes by the assessee being an individual or parent of his or a HUF". In the amended provisions, the word "assessee" has been qualified with words "being an individual" and further 'HUF' has been added in category of users of the land for agriculture purposes for an as to claim deduction u/s 54B of the Act. In our view, it is a highly debatable issue whether the word 'assessee' means an individual only or it includes an 'HUF' also in the pre-amendment provisions. In the amended section 54B of the Act as amended by Finance Act 2012, it has been specifically mentioned that the "assessee being an individual or his parent or a HUF". However, no such words as "assessee being an individual" finds mention in section 54B prior to such amendment, the wording prior to amendment was, "assessee or a parent of his". As per the provisions of the Income-tax Act, the assessee inter alia can be an individual or an 'HUF' also. Moreover, as per amended provisions deduction is available to the "assessee" if the land is used for agricultural purposes by the assessee himself or by his parent or an 'HUF'. What is noted is that amendment has been carried out in respect of 'user' of the land not in respect of the claimant/assessee whose income is assessed. It is also a well-known fact that in the land record maintained by the Land Revenue Department, ownership of property is entered in the name of an individual and not in the name of 'HUF' and that the 'HUF' claim of ownership over such a property by virtue of the property being ancestral and put into the common hotchpotch of the family. Under the circumstances, the issue being highly debatable and requires lengthy arguments."**

**17. In the light of the above we are of the view that the assessee HUF, is entitled to the benefit of section 54B, of the act for the assessment year under consideration, as we are of the opinion that the word assessee used in 54B, had**

**always included HUF and further the amendment brought on by the finance act 2013, in section 54 by inserting "the assessee being an individual or his parent, or a Hindu undivided family]" was classificatory in nature and was introduced by the Ministry with a view to extend the benefit to the Hindu undivided family. The Hindu undivided family,(HUF) has been the recognized as separate tax entity, therefore, before and after amendment , if the agricultural land, which was being used by HUF for two years prior to transfer, has been transferred by the HUF and HUF purchases any other agricultural land within two years of such transfer then it shall be entitled to the benefit of 54B / 54F.**

**19. In the light of the above discussion we are of the opinion that the appeal of the assessee is required to be allowed, all the grounds raised by the assessee are allowed . Hence the appeal of the assessee is allowed.**

| | |
|---|---|
| **-Sd-** | **-Sd-** |
| **(Dr. Mitha Lal Meena)** | **(Laliet Kumar)** |
| **Accountant Member** | **Judicial member** |

**Dated: 31/05/2021**
**Copy of order forwarded to:**

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|---|---|---|---|
| **(1)** | **The appellant** | **(2)** | **The respondent** |
| **(3)** | **Commissioner** | **(4)** | **CIT(A)** |
| **(5)** | **Departmental Representative** | **(6)** | **Guard File** |

**By order**

**Sr. Private Secretary**
**Income Tax Appellate Tribunal**
**Agra Bench, Agra**