

INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "G": NEW DELHI

BEFORE
SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 370/Del/2019

Asstt. Year : 2015-16

S.K. Agarwal (HUF), CH. No. 206-07, Ansal Satyam, RDC, Rajnagar, Ghaziabad Uttar Pradesh Pin 201002. PAN AALHS5692F	Vs.	ITO, Ward-2(3) Ghaziabad.
(Appellant)		(Respondent)

Assessee by:	Shri Akhilesh Kumar, Advocate
Department by:	Shri Umesh Takyar, Sr. DR
Date of Hearing	06.04.2022
Date of Pronouncement	30.06.2022

ORDER

PER ASTHA CHANDRA, JM

The appeal by the assessee arises out of the order dated 31.10.2018 of the Ld. Commissioner of Income Tax (Appeals)-Ghaziabad [**"CIT(A)"**] pertaining to the assessment year (**"AY"**) 2015-16.

2. The assessee is a HUF. It filed its e-return of income on 03.09.2015 declaring income of Rs. 4,63,380/- for AY 2015-16. After initial processing under section 143(1) of the Income Tax Act, 1961 (**the "Act"**), the case was selected under limited scrutiny through CASS. In response to notices under section 143(2) and 142(1) and questionnaire, the assessee filed written replies along with the required details and relevant documents / information and bank statements etc. which the Ld. Assessing Officer (**"AO"**) examined. The assessment under section 143(3) was completed on 21.12.2017 on total

income of Rs. 65,20,523/- including therein addition of Rs. 4,89,600/- representing disallowance of cost of construction of flat claimed by the assessee and addition of Rs. 55,67,543/- representing incorrect claim of exemption under section 54F. Aggrieved thereby, the assessee appealed before the Ld.CIT(A) who dismissed the appeal of the assessee. Now the assessee is before the Tribunal by way of second appeal.

3. The assessee has taken the following grounds of appeal:-

- "1. Because, the order of Ld. Lower Authority is bad in law as well as is against the facts and circumstances of the case.*
- 2. Because learned Commissioner of Income Tax(Appeals) erred in sustaining the addition of Rs. 55,67,573/-, being disallowance of 2/3rd of exemption claimed u/s 54F, without considering undisputed fact that total sale consideration is invested in the house in the name of members of HUF by wrongly presuming other members than karta of HUF as co-purchaser of property.*
- 3. Because, disallowance of said part claim u/s 54F is against the settled law on the issue in as much as assessee' had complied with all the conditions laid down under the law.*
- 4. Because, learned commissioner of Income Tax(Appeals) further erred in sustaining the disallowance of cost incurred Rs. 2,29,500/- in A.Y. 2004-05 & 2005-06 (Indexed cost Rs. 4,89,600/-) to make flat habitable without even recording any finding on the issue."*

4. Ground No. 1 is general in nature.

5. Ground No. 2 and 3 relate to addition of Rs. 55,67,543/- being disallowance of 2/3rd exemption claimed under section 54F of the Act. The Ld. AO discussed this issue in para 5 of his order. He found that in AY 2015-16 the assessee sold a plot of land for Rs. 1,14,85,000/- and after deducting indexed cost of acquisition of Rs. 35,92,964/- declared Long Term Capital Gain ("**LTCG**") of Rs. 78,92,036/- which was claimed exempt under section 54F by investing Rs. 83,03,000/- in the purchase of residential house on 26.07.2014. He noted further details of purchase of the residential house and observed that the house was purchased by the HUF assessee along with two other co-owners for Rs. 82,14,000/- and that the assessee

HUF paid 1/3rd share of Rs. 27,38,000/-. On these facts, the Ld. AO required the assessee to explain why Rs. 55,35,334/- be not added to the income of the assessee HUF being differential amount (Rs. 83,03,000/- exemption claimed under section 54F less Rs. 27,67,666/- being 1/3rd share of HUF).

6. In its written reply dated 18.12.2017 the assessee submitted that the assessee HUF made total payment of Rs. 83,03,000/- towards the purchase of the new residential property. All the payments have been made by the HUF. The name of the family members is added in every HUF case so as to identify the property owners. Also it is customary to make the immediate family members as "co-owners", so that in case of any eventuality the property is smoothly passed on to the other members of the family. Accordingly, the total amount of purchase is deductible under section 54F.

7. The explanation given by the assessee was not acceptable to the Ld. AO, for the solitary reason, that no documentary evidence was produced in support that other co-purchasers are members of the HUF. Therefore, only 1/3rd of the investment i.e. Rs. 27,38,000/- is allowable under section 54F. He computed LTCG at Rs. 60,29,243/- and after deducting therefrom LTCG declared at Rs. 4,61,700/- (Rs. 60,29,243 - Rs. 4,61,700) made the impugned addition of Rs. 55,67,543/- to the income of the assessee.

8. On appeal, the assessee submitted before the Ld. CIT(A) that the property sold belonged to the assessee HUF which consists of all the family members. The sale consideration was duly received by the HUF and deposited in S.K. Agarwal (HUF) account in the bank. The payment for purchase of the "new property" was made out of this very bank account. On being asked by the Ld. AO the assessee submitted details of all HUF members. Decision of Bangalore Bench of the Tribunal in the case of ITO vs. Shri Ramesh Kumar (HUF) (ITA No. 628/Bang/2010 - AY 2004-05) was cited wherein it is held that property purchased in the name of the individual member of the HUF qualifies for exemption under section 54.

9. The Ld. CIT(A) was not convinced. According to the Ld. CIT(A) there is no aberration in the action of the Ld. AO since the property is registered in the name of the HUF along with the other two members- Smt. Renu Agarwal and Shri Apoorv Agarwal as individuals and the total sum of Rs. 83,03,000/- has been invested by the HUF with two co-purchasers.

10. Aggrieved, the assessee is in appeal before the Tribunal.

11. The Ld. AR reiterated the same arguments which were advanced before the Ld. AO/ CIT(A). It was pointed out that the assessee HUF consisted of Karta S.K. Agarwal, his wife and son. Inviting our attention to the copy of Sale Deed dated 27.06.2014 (pages 46-50 of the paper book), it was submitted that the property was purchased and registered in the name of S.K. Agarwal HUF. All the payments were made from the bank account of S.K. Agarwal HUF maintained with Punjab National Bank. Copy of Bank Passbook appears at pages 32-36 of the paper book. The Ld. AR argued that the details of payments were submitted before the Ld. AO. The sale deed has provided the details of the transferee (page 12 of the paper book) as S.K. Agarwal HUF with PAN, Smt. Renu Agarwal w/o Shri S.K. Agarwal and Apoorv Agarwal s/o Shri S.K. Agarwal. Shri S.K. Agarwal, Karta, Smt. Renu Agarwal and Apoorv Agarwal are all members of S.K. Agarwal HUF. Only because along with the name of HUF, the names of other members of HUF are mentioned in the Deed, it has wrongly been alleged that all members of the family are co-purchasers. Our attention was drawn to the decision of the Hon'ble Gujarat High Court in PCIT vs. Vaidya Panalalmanilal (HUF) (2018) 98 taxmann.com 189 (Guj) wherein Hon'ble Gujarat High Court held that where the capital asset was sold by the HUF and purchased by the HUF as reflected in the accounts, the names of two members of the HUF shown in the sale deed was only a cosmetic in nature.

12. The Ld. DR, on the other hand, supported the orders of the Ld. AO / CIT(A).

13. We have given careful thought to the rival submissions and perused the material available on records. It is an admitted fact that during the AY 2015-16, the assessee HUF sold a plot of land and earned capital gain which it claimed exempt under section 54F as the assessee purchased a residential house. The only cause of denial of exemption by the Revenue is that in Sale Deed the names of the two members of HUF also appear along with the name of the assessee HUF and that the assessee failed to prove that other two co-purchasers are members of assessee HUF. On this ground alone the Revenue has negated the claim of the assessee HUF by making incorrect inference and surmise that the two members of the HUF are co-purchasers. This is unjustified on the face of the facts brought on record that the entire consideration towards purchase was financed by the funds of the HUF alone and there was no contribution by the two other members of HUF. The decision (supra) of the Hon'ble Gujarat High Court applies squarely to the facts of the assessee's case. Rather the case of the assessee is on better footing as in the decision (supra) of the Hon'ble Gujarat High Court the investment towards purchase of residential property was made in the name of some of its members instead of the assessee HUF. Even then, the Hon'ble Gujarat High Court held in the decision (supra) that the investment made in the name of members of HUF in substance and in effect belong to HUF. We are, therefore, of the opinion that the impugned addition deserves to be deleted. This ground of the assessee is thus allowed.

14. Ground No. 4 relates to disallowance of Rs. 4,89,600/- being expenditure incurred towards making the flat habitable. The Ld. AO made the impugned disallowance for want of documentary evidence in support of the claim. The Ld. CIT(A) did not record any finding at all. After hearing representative of both the parties, we deem it fit to restore the matter back to the file of the Ld. AO for decision afresh. We direct the Ld. AO to allow reasonable opportunity of hearing to the assessee to enable it to properly present its case before him.

15. In the result, the appeal of the assessee is treated as allowed subject to our direction in respect of Ground 4.

Order pronounced in the open court on 30th June, 2022.

sd/-

sd/-

**(G. S. PANNU)
PRESIDENT**

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 30/06/2022

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Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	