

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/TAX APPEAL NO. 1165 of 2018**

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PRINCIPAL COMMISSIONER OF INCOME TAX VADODARA 1**Versus****VAIDYA PANALALMANILAL (HUF)**

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Appearance:**MR.VARUN K.PATEL(3802) for the PETITIONER(s) No. 1**
for the RESPONDENT(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI**and****HONOURABLE MR.JUSTICE B.N. KARIA****Date : 24/09/2018****ORAL ORDER****(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)**

1. This Appeal is filed by the Revenue to challenge the judgement of the Income Tax Appellate Tribunal dated 10.01.2018 raising following question:

“Whether in the facts and in circumstances of the case, the learned ITAT has erred in law and on fact in directing that the assessee is eligible for deduction u/s. 54F even when the investment in new asset was not in the name of assessee HUF contrary to provisions of section 54F of the Income Tax Act?”.

2. At the outset, counsel for the Revenue submitted that though the tax effect involved is very low, the appeal is filed since it arises out of audit objection. Be that as it may, we have heard counsel for the Revenue on merits.

3. Respondent-assessee is Hindu undivided family ['HUF' for short]. For the assessment year 2009-10, in the return filed by the HUF, the question of exemption of capital gain in terms of section 54F of the Income Tax Act, 1961 ['the Act' for short] came-up for consideration. Brief facts were that the assessee held a capital asset which was sold for consideration of Rs. 19 lacs. The capital gain arising out of such transaction was Rs. 12,71,068/-. The assessee claimed exemption of such capital gain under section 54F of the Act on the ground that it has purchased new residential house for Rs. 20 lacs. Assessing Officer scrutinized such claim and noticed that purchase of the new residential house was in the name of two members of the HUF and not in the name of HUF. He was of the opinion that for claiming exemption under section 54F of the Act, the purchase of a new capital asset had to be by the same assessee who had sold the capital asset which was a subject-matter of gain.

4. CIT (A) and the Tribunal reversed such decision, in particular, the Tribunal while confirming the view of the CIT (A) made following important factual observations:

“9. We have carefully considered the rival submissions. The limited controversy in the present case concerns eligibility of deduction under section 54F of the Act in the hands of HUF where the consideration arose in the hands of HUF on sale of capital asset has been invested for purchase of new residential house in the name of some of its members instead of assessee (HUF). In this regard we find that the assertion made on behalf

of the assessee that the new residential house was acquired out of resources of the HUF and is also declared in the books of accounts of the HUF as property belonging to HUT remains uncontroverted. Therefore the investment made in the name of members of HUF in substance and in effect belong to the HUF.”

5. The Tribunal thereafter generally discussed the law concerning HUF in following terms:

“We take note of the plea on behalf of the assessee that the Hindu Law does not recognise a joint Hindu family or coparceners as a juristic personality capable of holding property and as an entity separate from 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. The HUF has a separate and distinctive status as an assessable entity for the limited purpose of Income Tax Act alone. Therefore it is natural that the property of the HUF stands in the name of the Karta of the HUF or in the name of one or more 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 without going into the merits of the capability of HUF to acquire and hold property in its name, we do find justification for purchase of property in the name of its members to shun alleged obscure position in this regard.”

6. Counsel for the Revenue contended that the assessee had not fulfilled the requirements of section 54F of the Act. The Assessing Officer was therefore correct in denying the exemption. He relied on the following judgements.

(i) Decision of Delhi High Court in case of ***Vipin Malik (HUF) vs. Commissioner of Income Tax*** reported in 330 ITR 309;

(ii) Decision of Rajasthan High Court in case of ***Kalya vs. Commissioner of Income Tax*** reported in 208 ITR 436;

(iii) Decision of Bombay High Court in case of ***Prakash (by legal heir of assessee) vs. Income Tax Officer*** reported in 312 ITR 340.

7. The materials on record would suggest that there was no dispute at the hands of the Revenue that the sale consideration arising out of the sale of the capital asset was used for acquisition of a new asset and that such newly acquired asset was also shown in the accounts of the HUF. Revenue's sole objection is that the sale deed was not executed in the name of the HUF but was in the name of two of the members of the HUF.

8. In our opinion, the Tribunal was right in coming to the conclusion that this was substantial compliance with the requirement of section 54F of the Act when neither the source of acquisition of the new capital asset nor the account of such new asset in the name of the HUF are doubted. Mere technicality that the sale deed was executed in the name of member of the HUF rather not HUF, would not be sufficient to

defeat the claim of deduction. By mere names of the purchasers in the sale deed, the rights of the HUF and other members of the HUF do not get defeated. If at all, the persons' named in the sale deed hold the property of the trust for and on behalf of HUF and the other members of the HUF.

9. In case of ***Vipin Malik (HUF)*** (supra), Delhi High Court did not have occasion to exempt this aspect of the matter. In case of ***Kalya vs. Commissioner of Income Tax*** (supra), Rajasthan High Court was concerned with the very different situation. It was a case where the assessee had sold an immovable property and purchased a new agriculture land in the name of his son and daughter-in-law. It was in this background, the assessee's claim for exemption under section 54B of the Act was declined. Likewise, in case of ***Prakash (by legal heir of assessee) vs. Income Tax Officer*** (supra), the assessee had invested the sale proceeds out of sale of capital asset in name of adopted son. It was in this background held that the assessee was not entitled to exemption under section 54F of the Act. The common thread running in these three cases is that the purchase of the new asset was in the name of person other than the assessee. The title was vested in such purchaser and not in the name of the assessee who had sold the existing capital asset. In the present case, 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.

10. In the result, Tax Appeal is dismissed.

(AKIL KURESHI, J)

(B.N. KARIA, J)

JYOTI V. JANI

