

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'H' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT  
&  
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-6311/Del/2015  
(Assessment Year: 2007-08)**

Mukesh Kumar Gupta (HUF) Banu Mal Nagar, Model Town, Karnal AAAHM6884S	vs	ITO Ward-2 Aayakar Bhawan Sector 12 Karnal
<b>Assessee by</b>	<b>Sh. K.L. Aneja, Adv.</b>	
<b>Revenue by</b>	<b>Sh. Arun Kumar Yadav, Sr. DR</b>	

<b>Date of Hearing</b>	<b>19.09.2017</b>
<b>Date of Pronouncement</b>	<b>09.10.2017</b>

**ORDER**

**PER SHRI K.N. CHARY, JUDICIAL MEMBER**

This appeal of the assessee is challenging the order dated 14.10.2015 in appeal no. 40/KNL/2013-14 passed by the Ld. Commissioner of Income Tax (Appeals), Karnal (hereinafter for short called as the "Ld. CIT (A)") on the following grounds:

1. "That the order of the Ld. CIT (A) is against law and facts.
2. That order not deleting the penalty ignoring the facts and case law is against law and facts."

2. Original assessment of the assessee was completed on 22.05.2009 u/s 143(3) of the Income Tax Act (for short referred to as the "Act") at a total return of Rs. 1,01,514/- and at that time AO noticed that the assessee had earned long term capital gains at Rs. 49,68,385/- and to save the same the assessee purchased the capital gain bonds of Rural Electrification Corporation of a value of 32 lacs and claimed exemption u/s 54B of the Act. For the balance of the amount he purchased agricultural land worth Rs. 26,09,400/- and exemption u/s 54B was allowed. However, the CIT (A) holding that the allowance of exemption of Rs. 17,68,385/- was erroneous and prejudicial to the interest of Revenue in proceedings u/s 263(1) of the Act, set aside the matter of the AO for fresh consideration, pursuant to which the AO reassessed the income of the assessee and denied the exemption u/s 54B of the Act as it was available only to the individual assesses and not to the HUF. Simultaneously the AO initiated proceedings u/s 271(1)(c) of the Act and levied a penalty of Rs. 3,96,840/-. Appeal preferred by the assessee was dismissed by the CIT (A) by way of impugned order, hence, this appeal by the assessee.

3. It is the submission of the Ld. AR that though exemption u/s 54B was not available to the HUF prior to the Finance Act, 2012, however, vide clause 18 of Finance Bill, 2012 exemption u/s 54B was expressly allowed by the statute without any change in the facts and environment that were prevailing prior thereto and according to the Ld. AR when the statute itself considered that the denial of exemption u/s 54B of the Act was without any cogent reasons and allowed it subsequently, it cannot be said that the assessee tried to evade tax when he truly and fully disclosed all the material facts at the time of original assessment and considered by the AO. Per contra, it is the argument of the Ld. DR that since this matter relates to the year 2007-08 amendment allowing exemption u/s 54B of the Act in respect of the HUF cannot be extended to the facts of the case, as such, the authorities below are justified in holding that there is furnishing of inaccurate particulars.

4. We have carefully gone through the record. The very fact that in the scrutiny assessment this issue has not arisen but subsequently only during the audit it was found resulting in revision of the assessment u/s 263 of the Act shows that there is a

*bona fide* issue in this respect on the part of the persons involved therein. Merely because subsequently the mistake was pointed out during the audit does not automatically lead to the conclusion that there is an active involvement of mind on the part of the assessee to furnish inaccurate particulars. As a matter of fact it is only on the details furnished by the assessee the Revenue could point out the question of allowability or otherwise of the exemption u/s 54B of the Act. Having regard to the facts and circumstances of the case, we are of the considered opinion that there is neither concealment of income or furnishing of inaccurate particulars thereof. At the best the claim made by the assessee was a wrong claim, but not a false claim. With this view of the matter, we direct the AO to delete the penalty.

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

Order pronounced in the open court on 09.10.2017

Sd/-  
**(G.D. AGRAWAL)**  
**PRESIDENT**

Sd/-  
**(K.N. CHARY)**  
**JUDICIAL MEMBER**

Dated: 09.10.2017

\*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

TRUE COPY

ASSISTANT REGISTRAR  
ITAT NEW DELHI