

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'F' NEW DELHI  
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER  
I.T.A .No. 5916/DEL/2014  
(ASSESSMENT YEAR-2007-08)**

ITO Ward-2 Rewari <b>(APPELLANT)</b>	Vs	Rohtash Santra Bhateri D/o. Sh. Tara S/o. Sh. Harsahai HUF, Vill. Garhi Alawalpur, Dharuhera Rewari <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Kapil Goel, Adv</b>
<b>Respondent by</b>	<b>Sh. Atiq Ahmad, Sr. DR</b>

<b>Date of Hearing</b>	<b>27.12.2017</b>
<b>Date of Pronouncement</b>	<b>29.12.2017</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal has been filed by the Revenue against the order dated 28/08/2014 passed by CIT(A)- Rohtak for Assessment Year 2007-08.

2. The grounds of appeal are as under:-

1. *“On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the addition amounting to Rs. 82,68,750/- made by AO on account of Long Term Capital Gain by observing that capital gain be assessed in the hands of four individuals as against assessed by the AO in the status of HUF.*

2. *On the facts and in the circumstances of the case, the Ld. CIT (A) has*

*erred in not appreciating that during assessment proceedings, the assessee did not agitate that the capital gain arise in hands of individuals.*

3. *On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in accepting the argument of the assessee that issue of non-taxability of the Capital Gains in hands of the HUF was raised before the AO vide letter dated 10.05.2012(Copy at Appendix -1). The contents of the letter do not agitate taxability in hands of HUF.*
4. *On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in not appreciating that during the assessment proceedings, the assessee itself furnished calculation of Capital Gain in the hands of the assessee vide letter dated 15.03.2013.( Copy at Appendix -2).*
5. *The appellant craves leave to add, amend, alter, modify, delete and or change any of the above grounds on or before the date of hearing.”*

3. On the basis of AIR information available with the office, the assessee had sold agriculture land of Rs. 82,68,750/- on 28.04.2006. The land sold in question was falling within 5 KM distance from the limits of notified area Dharuhera, Therefore, the A.O observed that the land sold by the assessee was covered in the definition of Capital Assets in view of the notification issued by the CBDT on 06.01.1994 F.No. 164/03/87/ ITAI dated 06.01.94. Notice u/s 148 of the I.T. Act, 1961 was issued on 21.03.2012 after recording the reasons. On 19.02.2013, the assessee filed its return of income declaring total income at Rs. Nil. Notices u/s 143(2)/142( 1) were issued on 11.03.2013 and the reasons recorded were duly supplied to the assessee. In compliance of notices, none attended the assessment proceedings and only a written reply dated 15.03.2013 was filed which was perused and placed on record by the Assessing

Officer . The Assessing Officer made addition on account of Long Term Capital Gain to the extent of Rs.82,68,750/- by holding that Assessee did not furnished any documentary' evidence showing as to how the value of land was taken at Rs. 15,94,500/- as on 01.04.1981. The Assessing Officer held that the fair valuation of land as on 01.04.1981 devoids any merits and did not accept assessee's contentions.

4. Being aggrieved by the assessment order, the assessee filed appeal before CIT(A). The CIT(A) allowed the appeal of the assessee.
5. The Revenue has filed present appeal. The Ld. DR submitted that the CIT(A) erred in deleting addition amounting to Rs.82,68,750/- made by the A.O on account of Long Term Capital Gain by observing that capital gain be assessed in the hands of four individuals as against assessed by the A.O in the status of HUF. The Ld. DR submitted that during assessment proceedings, the assessee did not agitate that the capital gain arise in hands of individual.
6. The Ld. AR submitted that Rohtash, Santra, Bhateri & Roshni are four individual and the Assessing Officer wrongly held that these are HUF which is legally not sustainable. The Ld. AR relied on the order of CIT (A).
7. We have heard both the parties and perused all the record. The CIT(A) held as under:-

*“2.3. Firstly on basis of judicial precedents below, it is humbly accentuated that there is no person assessable in eyes of law as deemed by A.O in status **“ROHTASH SANTRA BHATERI D/O Sh. Tara S/o Harshai HUF”** so as to pass a valid order in eyes of law.*

*That is, for assessing gains arising from sale of land belonging to four individuals, A.O made consolidated assessment in hands of HUF which is*

*impermissible and beyond the law.....*

*.....The submissions made before me and the facts on record prove that the assessment has been made in respect of an HUF that did not exist. The appellant had already appraised the AO of this fact vide a letter dated 10.05.2012. A sale deed executed for a piece of land belonging to four persons does not constitute each individual owner as being a closed body or HUF. There is no proof of pooling of joint resources to justify such a clubbing of income. What is required is that the income so earned by each individual should be examined in respect of capital gain accruing, if any, in their individual capacity. The AO is at liberty to take action as per law in each individual case viz. Mr. Rohtash, Ms Santra, Ms Bhateri and Ms Roshni. The addition in the capacity of HUF is deleted.”*

These are three different individuals and never was HUF. The Assessing Officer wrongly presumed that it is HUF. Thus, the CIT (A) rightly allowed appeal of the assessee and there is no need to interfere with the findings of the CIT (A).

8. In result, the appeal of the Revenue is dismissed.

**Order pronounced in the Open Court on 29<sup>th</sup> December 2017.**

Sd/-

**(R.K. PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 29/12/2017  
R. Naheed \*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)

5.

DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	27/12/2017	PS
2.	Draft placed before author	28/12/2017	PS
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	29.12.2017	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	29.12.2017	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		

