

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B', HYDERABAD**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

S.No.	ITA No.	AY	Assessee	Respondent
1.	1001/H/11	2007-08	Kandada Babu Rao (HUF), RR District. PAN-AANHK066K	Asst. Commissioner of Income-tax, Circle - 8(1), Hyderabad.
2	913/H/12	2007-08	Mali Chandrasekhar (HUF), RR Dist. PAN-ASKPM0486A	-do-
3	914/H/12	2007-08	Mali Narasimha (HUF), RR Dist.	-do-
4	1541/H/13	2007-08	Konde Mallesh (HUF), RR Dist. PAN-AYVVK8914E	-do-
5	1539/H/13	2007-08	Konde Anjaiah (HUF), RR Dist. PAN-AYWPK0258J	-do-
6	1540/H/13	2007-08	Konde Sandaiah (HUF), RR Dist. PAN-BJSPK7138K	-do-
7	1605/H/13	2007-08	Konde Srisailam (HUF), Hyd. PAN-BHPPK 7024R	-do-
8	55/H/12	2007-08	Sri Jilakara Agamaiah, RR Dist. PAN-	-do-
9	54/H/12	2007-08	Sri Jilakara Narasimha, RR Dist. PAN-	-do-
10	209/H/14	2007-08	Jilakara Chinna Sataiah (HUF), RR Dist. PAN-AQIPG9569Q	-do-
11	56/H/12	2007-08	Sri Jilakara Sandaiah, RR Dist. PAN-ARYPG3401G	-do-
12	1542/H/13	2007-08	Dappu Padma	-do-

			Rao (HUF), RR Dist., PAN-AMLPD2579G	
13	1543/H/13	2007-08	Dappu Ramulu (HUF), RR Dist.	-do-
14	1544/H/13	2007-08	Dappu Narasimha (Smaller HUF), RR. Dist.	-do-
15	59/H/14	2007-08	Late Dappu Yadaiah (HUF), L/R Dappu Ashok, Rajendra Nagar, Mandal, RR Dist.	-do-
16	60/H/14	2007-08	Dappu Ashok (HUF), S/o Dappu Rajaiah, Hyd.	-do-
17	36/H/14	2007-08	Sri Dappu Ashok (HUF), Hyd.	-do-
18	915/H/12	2007-08	Dappu Narasimha (HUF), RR Dist.	-do-
19	929/H/12	2007-08	Dappu Babu Rao (HUF), Hyd.	-do-
20	1545/H/13	2007-08	Dappu Narasimha (larger HUF), RR Dist. PAN-ANJPD5536E	-do-
21	1546/H/13	2007-08	Dappu Naveen Kumar (HUF), RR. Dist.	-do-
22	926/H/12	2007-08	Banda Sudershan (HUF), Hyd.	-do-
23	57/H/12	2007-08	Sri Banda Pentaiah, RR Dist.	-do-
24	928/H/12	2007-08	Banda Mallesh (HUF), RR Dist.	-do-
25	1590/H/12	2007-08	Konde Narasimha (HUF)	-do-

Assessee by: Shri Mohd. Afzal &
Shri AV Raghuram
Revenue by: Shri Kiran Katta &
Shri YVST Sai

Date of hearing: 20/08/2019
Date of pronouncement: 23/10/2019

OR D E R

PER SMT. P. MADHAVI DEVI, J.M.:

All these group appeals are filed by different assessees. Since common issues are involved, these appeals were clubbed and heard together, therefore, a common and consolidated order is passed in all these appeals for the sake of convenience.

ITA No. 1001/Hyd/2019 in the case of Kadada Babu Rao (HUF)

2. This is the assessee's appeal for AY 2007-08 against the order of CIT(A) – III, Hyderabad dated 25/03/2011.

3. Brief facts of the case are that there was a survey u/s 133A of the IT Act on 31/10/2008 in the case of Konde Anjaiah Group and M/s Balaji Real Estates. During the course of survey, it was noticed that the assessee along with other groups of family members have sold certain lands in Peeramcheruvu Village to M/s PBEL Property Development (India) Pvt. Ltd. during the FY 2006-07. From the information so gathered, the AO observed that such land is located within the distance of 8 kms from the limits of Hyderabad Municipal Corporation and therefore the said land is a capital asset within the meaning of section 2(14) of the Act and hence, capital gains has arisen from said transaction and the family

members of the groups who have sold the land are exigible to capital gain tax. Observing that none of the parties to the agreement of sale-cum-GPA, who have transferred their above asset, have filed their returns of income and that no taxes have been paid, AO reopened the assessments of all the above assesseees u/s 148 of the Act. Thus, assessee individual was also issued notice u/s 148 of the Act.

3.1 The AO observed that the land sold by the assessee is the ancestral property of the assessee and therefore, he was of the opinion that capital gain is to be brought to tax in the hands of HUF, whose Karta is the assessee. However, in response to the notice u/s 148, the assessee filed his return of income in the capacity of individual. AO, therefore, required the assessee to file the return in his HUF capacity. But, the assessee did not respond and therefore, the final notice dated 25/11/2009 was issued in response to which, the assessee filed his return in 'HUF' capacity declaring 'NIL' income mentioning that he does not have any sale consideration in HUF capacity. AO did not accept the assessee's contention that the sale consideration is not taxable in the hands of HUF, but, it is taxable in the hands of the assessee in his individual capacity. He observed that assessee has received the said property as ancestral property and, therefore, according to Hindu Law, he was of the opinion that the scheduled property

is HUF property and assessee has received sale consideration as Karta of existing HUF. Therefore, he proceeded to compute the capital gains arising out of this transaction in the hands of the HUF and also examined the allowability of the claim of exemption u/s 54F and 54B of the Act, as well as expenses claimed towards sale of land. He observed that in support of his claim of deduction u/s 54F, the assessee has claimed that he has invested a sum of Rs. 81,25,800/- towards construction of a residential house, the property is owned by Smt. K. Anitha and not the assessee. He, therefore, disallowed the claim of deduction u/s 54F. Similarly, he also disallowed assessee's claim of deduction u/s 54B on the ground that assessee is an HUF, whereas section 54B is applicable only to individuals. He also disallowed the expenditure on sale of land i.e. Rs. 14,00,000/- on the ground that assessee has failed to prove the claim of deduction with any evidence. Accordingly, he computed the long term capital gains and brought it to tax in the hands of the assessee, HUF.

4. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A). Similarly, all other assessee's filed appeals before the respective CIT(A)s against the orders of AOs treating the individuals as Kartas of HUF and bringing capital gain arising out of the above transaction to tax.

5. The CIT(A) granted relief to all the assesses by holding that the land is beyond 8 km from limits of Hyderabad Municipal Corporation and therefore is not a capital asset within the meaning of section 2(14) of the Act.

6. Against the orders of CIT(A), the revenue filed appeals before the Tribunal and the coordinate bench of this Tribunal has held the issue in favour of the revenue by holding that the land in question is a capital asset within the meaning of section 2(14) of the Act. Therefore, the ITAT has set aside the issue on merits to the file of the CIT(A).

7. Consequent to the directions of ITAT, the CIT(A) has reconsidered the issue and confirmed the order of AO treating the property as HUF property and declined to grant deductions u/s 54F and 54B of the Act to the respective assessees. He also confirmed the disallowance of expenditure claimed by the respective assessees towards sale of their extent of land.

8. Aggrieved, the assessee is in second appeal before us by raising the following revised and additional grounds of appeal:

"1. The order of the learned Commissioner of Income Tax (A) is against the law, weight Rs.1,82,82,192/- of evidence and probabilities of case.

2. *The learned Commissioner of Income Tax (Appeals) erred in confirming the order of the Assessing Officer, in respect of determination of income from capital gains at Rs.5,61,87,201/-, where as the subject land is not a capital asset as per section 2(14), therefore, the transaction is not in the purview of the I.T. Act.*

3. *The learned Commissioner of Income Tax erred in assuming that the land is not in the nature of agricultural land and further erred in assuming that the same as capital asset, the assumption of the learned Commissioner of Income Tax is not in conscience of I.T. Provisions.*

4. *The learned Commissioner of Income Tax erred in assuming the land as capital asset, whereas, in all other cases of the same survey number, the other Commissioner has held that the land is not a capital asset.*

5. *The learned Commissioner erred in not following the orders of the other Commissioners which are passed in identical facts and circumstances pertaining to the assessee's who have sold the lands in same survey number, without any facts which are different.*

6. *The learned Commissioner erred in confirming the order of the Assessing Officer, wherein, the status of the assessee is adopted as HUF as against the claim of the assessee as Individual without considering the factual position and also without considering the provisions of Hindu Succession Act 1956.*

7. *The learned Commissioner erred in confirming the order of the Assessing Officer, wherein, the deduction u/s 54F was not allowed without any cogent reasons.*

8. *The learned Commissioner erred in confirming the order of the Assessing Officer, wherein, the deduction u/s 54B was not allowed assuming that the assessee's status is that of HUF not an Individual by rejecting the claim of the assessee that his status is Individual.*

9. *The learned Commissioner erred in confirming the order of the Assessing Officer, wherein, Rs.14 Lakhs, was not allowed, which was incurred on account of sale of land, without any cogent reasons.*

10. *The assessment is made by issuing a notice u/s 148 to the non-existing HUF, therefore, notice issued is invalid. Therefore, the learned Commissioner erred in confirming the assessment order which stands on an invalid notice. Therefore, assessment on the invalid notice required to be cancelled/treated as null and void.*

11. *Learned Assessing officer completed the assessment and issued Form No. 156 (demand notice) without allotting PAN, therefore, the demand notice and the order, are to be held as invalid.*

12. *The appellant craves leave to add to, amend or modify the above grounds of appeal either before or at the time of hearing of the appeal, if it is considered necessary.*

8.1 Additional Grounds of appeal:

1. *The assessment is made by issuing a notice u/s 148 to the non-existing HUF, therefore, notice issued is invalid. Therefore, the learned Commissioner erred in confirming the assessment order which stands on an invalid notice. Therefore, assessment on the invalid notice required to be cancelled/treated as null and void.*

9. The Id. Counsel for the respective assessees Sri Mohd. Afzal & Sri AV Raghuram submitted that the AO has misdirected himself in considering the property as HUF property of the respective assessees. He submitted that undisputedly the assessee and other respective assessees have inherited the property from their ancestors and, therefore, it is ancestral property, but, on the death of their ancestor, the legal heirs have become the absolute owners in their individual capacity and as per section 6 & 8 of the Hindu Succession Act, 1956 it is the property of the individuals and the coparceners are holding the property as tenants in

common and not as joint tenants. Therefore, according to him, each of the individuals is the absolute owner of the land to the extent they have inherited and have accordingly offered the capital gain to tax in their individual returns and claimed eligible exemptions u/s 54F and 54B. He also submitted that pursuant to the agreement of sale-cum-GPA, sale consideration has been paid directly to each of the individual owners separately and, therefore, it is established that each of the owner is the absolute owner of the property and there is no existence of any HUF. In support of his contention about the legal position after the enactment of Hindu Succession Act of 1956, he placed reliance upon various case law and particularly in the case of CWT Vs. Mukundgiri [1983] 144 ITR 18 (AP), wherein the difference between the Hindu Law prior to Succession of Hindu Act, 1956 and devolution of property rights thereafter, has been discussed at length and it was held that after the Hindu Succession Act, 1956, there is a radical change in the devolution of the property on the successors and the property becomes the successors' absolute property and will not become the property of the HUF. The other cases relied upon by Id. Counsel for the assessee are as under:

1. Yudhishter Vs. Ashok Kumar (SC) 1987 AIR 558
2. Uttam Vs. Saubhag Singh & Ors (SC) Civil Appeal No. 2360 of 2016.

3. Shiv Vallabhdas Modhani Vs. CIT (MP-HC) 138 ITR 673

4. Ravi Shanker Sharma Vs. Kaliram Sharma & Ors (Delhi – HC)

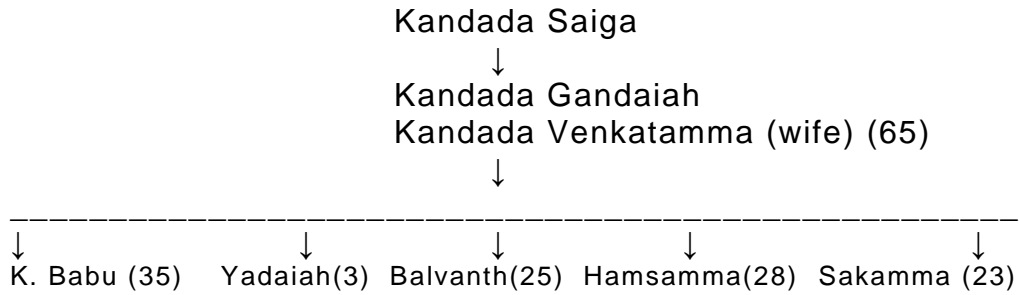
5. Surender Kumar Vs. Dhaniram & Ors (Delhi-HC) CS(OS) No. 1737/2012

9.1 Ld. Counsel for the assessee, therefore, submitted that returns filed by the assesseees in their individual capacity should be considered and accepted.

10. Ld. DR, on other hand, supported the orders of the authorities below and furnished before us the guidelines of CBDT on assessments of HUF and how the property of HUF should be assessed. He also placed reliance upon the following decisions in support of his contention:

1. Smt. Gousai Begum & Shri Mirza Mustafa Baig Vs. DCIT, 18 Taxmann.com 152 (Hyd.), dt. 16/11/2011
2. CIT Vs. smt. Anjana Sehgal (P&H HC), ITA No. 276 of 2004
3. Bolla Ramaiah (AP HC), 39 Taxmann 345, dated 26/03/1987.
4. GK Devrajulu, (Madras HC), 56 Taxmann 85, dated 19/12/1990.
5. Sri Srinivas Pandit (HUF), AP HC), ITTA No. 195 of 2013
6. Gowli Buddanna (SC), [1996] 60 ITR 293 (SC)
7. Smt. Sarifabibi Mohmed Ibrahim, [1993] 70 Taxman 301 (SC)
8. Sri N.V. Narendranath, [1969] 74 ITR 190 (SC)
9. Thamma Venkata Subbamma, [1987] 168 ITR 760 (SC)
10. D.S. Karunakar Reddy Vs. DCIT, ITA No. 752 to 757/H/2011, dtd. 30/11/2011.

11. Having considered the rival contentions and the material on record, we find that undoubtedly the land in question was inherited by the assessee and his family members on the death of their predecessor. The family members of the assessee and others depicted by the AO at para 2 of his order is reproduced below:



11.1 Ld. Counsel for the assessee stated that after the death of Kandada Saiga, grand father of the assessee, the property devolved on Kandada Gandaiah, Assessee's father and after the death of Kandada Gandaiah, the property has devolved on his five children, which includes his daughters as well. We find that in the case of CWT Vs. Mukundirji (supra), the Hon'ble Jurisdictional High Court has considered the issue as to the facts and circumstances in which, the property devolved on an assessee on his father's death and the question was whether the property is assessable in the individual capacity or in the status of HUF. The Hon'ble High Court held that the Hindu Succession Act, 1956 has come into force the properties which devolved on the assessee on his father's death are assessable in the status of individual and not in the status of

HUF comprising of the assessee and his son or sons, as the case may be. It was also held that after the introduction of Hindu Succession Act, the property devolved on his heirs as their individual property.

11.2 Further in the case of Yudhishter Vs. Ashok Kumar (supra), the Hon'ble Supreme Court has clearly held that after Hindu Succession Act, 1956, when the son inherited the property in the situation contemplated by section 8, he does not take it as Kartha of his own undivided family, but takes it in his individual capacity.

11.3 In the case of Uttam Vs. Saughag singh & Ors (supra), the Hon'ble Supreme Court has held that the share of the Hindu male coparcener is governed by the proviso to section 6 of Hindu Succession Act and a partition is effected by operation of law immediately before his death and in this partition, all the coparceners and the Hindu Male's widow get a share in the joint family property. On the application of section 8 of the Act, it was held that such property would devolve only by intestacy and not survivorship. It was also held that after the joint family property has been distributed in accordance with section 8 on the principles of intestacy, the joint family property ceases to be joint family property in the hands of the various persons who have succeeded to it as

they hold the property as tenants in common and not as joint tenants.

11.4 Thus, the above decisions of the Hon'ble Supreme Court on the inheritance of property of an individual who dies intestate, after the introduction of Hindu Succession Act, 1956, hold that on the death of the Hindu Male, the property devolves on the heirs in their individual capacity and ceases to be the HUF property. Respectfully following said decision, we hold that the property inherited by the respective assesseees is their individual property and, therefore, the capital gains, if any, is exigible to tax in their individual hands alone. Therefore, the ground of appeal No. 2 in the case of Kandada Babu Rao and similar ground on this issue in the case of all other assesseees are allowed.

11.5 As regards the question as to whether the said property is a capital asset u/s 2(14) of the IT Act, is not required to be adjudicated at this stage as it has already been decided by the coordinate bench of this Tribunal in the assessee's case in the earlier round of litigation that it is a capital asset u/s 2(14) of the IT Act. Thus, the grounds of appeal on this issue in the case of all the assessee's are rejected.

11.6 As regards the assessee's claim of deduction u/s 54B of the Act, we find that the AO and CIT(A) have not really examined the allowability of such claim by holding the assessee to be an HUF and held that deduction u/s 54B is allowable only in the case of individuals. Further, with regard to the claim of deduction u/s 54F also, the AO has not gone into the details of the investment made in the residential property and whether the conditions of section 54F are fulfilled by the respective assessees. Therefore, we are of the view that the grounds of appeal on the issue of deduction under sections 54F and 54B needs reconsideration afresh by the AO. Therefore, they are set aside to the file of the AO and the grounds are treated as allowed for statistical purposes.

11.7 As regards the expenditures claimed as incurred towards sale of their land, the assessees have not been able to provide any evidence in support of such claim and, therefore, disallowance of such claim is confirmed in each of the cases.

11.8 In view of the above discussion, all the appeals of the assessees are treated as partly allowed and only as regards the claim u/s 54F & 54B they are are set aside to the file of the AO.

12. In the result, all the appeals of the assesseees are partly allowed.

Pronounced in the open court on 23rd October, 2019.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, dated 23rd October, 2019.

kv
Copy forwarded to:

1.Kandada Babu Rao (HUF),	C/o Mohd. Afzal, Advocate, 11-5-465, Sherson's Residency, Flat No. 402, Criminal Court Road, Red Hills, Hyderabad – 500 004.	
2. Mali Chandrasekhar (HUF)		
3. Mali Narasimha (HUF),		
4. Konde Mallesh (HUF),		
5. Konde Anjaiah		
6. Konde Sandaiah (HUF),		
7. Konde Srisailam (HUF),		
8. Sri Jilakara Agamaiah,		
9. Sri Jilakara Narasimha,		
10. Jilakara Chinna Sataiah (HUF)		
11. Sri Jilakara Sandaiah,		
12. Dappu Padma Rao (HUF),		
13.Dappu Ramulu (HUF),		
14. Dappu Narasimha (Smaller HUF),		C/o S/Shri K. Vasantkumar, AV Raghuram, P. Vinod & M. Neelima Devi, Advocates, 610 Babukhan Estate, Basheerbagh, Hyderabad – 500 001
15. Late Dappu Yadaiah (HUF), L/R Dappu Ashok,		
16. Dappu Ashok (HUF), S/o Dappu Rajaiah, Hyd.		
17. Sri Dappu Ashok (HUF), Hyd.		
18. Dappu Narasimha (HUF),		
19. Dappu Babu Rao (HUF), Hyd.		
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21.Dappu Naveen Kumar (HUF),		
22. Banda Sudershan (HUF), Hyd.		
23. Sri Banda Pentaiah, RR Dist.		
24. Banda Mallesh (HUF), RR Dist.		
25. Konde Narasimha (HUF)		

- 26 *ACIT, Circle – 8(1), Signature Towers, Kondapur, Hyderabad.*
- 27 *CIT(A) – III Hyderabad.*
28. *CIT – II, Hyderabad*
29. *The DR, ITAT, Hyderabad*
30. *Guard File*