

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: 997/CHNY/2017

निर्धारण वर्ष /Assessment Year:2012-13

M/s. Mahadevan HUF,
No.1B, Sujatha Apartments,
No.103, 4th Street,
Abiramapuram,
Chennai – 18.

The Income Tax Officer,
v. Non Corporate Ward 3(4),
Chennai-34.

PAN: AAEHM 9761L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri Suhrith Parthasarathy, Advocate
: Shri Guru Bashyam, CIT

सुनवाई की तारीख/Date of Hearing : 07.06.2022

घोषणा की तारीख/Date of Pronouncement : 15.06.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the revision order passed by the Principal Commissioner of Income Tax, Chennai in C.No.2(1)/PCIT-5/NCR-3/2016-17, dated 21.02.2017 u/s.263 of the Income Tax Act, 1961 (hereinafter the 'Act'). The assessment was framed by the Income Tax Officer, Non-Corporate Ward 3(4),

Chennai for the assessment year 2012-13 u/s.143(3) of the Act vide order dated 12.03.2015.

2. The only issue in this appeal of assessee is against the revision order passed u/s.263 of the Act, by the PCIT without jurisdiction and holding that the original asset in question was not of HUF and therefore directed the AO for clubbing as per provisions of section 64(2)(b) of the Act. For this assessee has filed following six concise grounds:-

1. The Ld. Principal Commissioner's order u/s.263 of the Act is without jurisdiction and he has erred both in law and on facts, and is, therefore, liable to be set aside.

2. The Ld. Principal Commissioner has failed to appreciate that the original assets in question were in fact purchased from the funds of the assessee HUF, which was raised by way of loans advanced to the assessee HUF by its members, and that therefore there is no question of any clubbing as envisaged u/s. 64(2)(6) of the Act.

3. The Ld. Principal Commissioner has erred in failing to recognize the provisions or s. 80C of the Act, which expressly permits members of HUFs to hold investments for the benefit of the HUF in the name of the members, who were legally holding the investments in their name.

4. The Ld. Principal Commissioner has wholly disregarded well settled law that holds that when a property is purchased out of the funds of an HUF in the name of a member of an HUF, such a property would necessarily belong only to the HUF.

5. The Ld. Principal Commissioner in holding that the original assets belonged to the individuals and not the assessee HUF has ignored all

documentary evidence submitted by the assessee which clearly reflects the assessee HUF as the owner of the original assets.

6. The Ld. Principal Commissioner had miserably failed to satisfy the conditions envisaged in clause (i) and clause (ii) of Explanation 2 to section 263, as inserted by way of amendment through the Finance Act, 2015.

3. Brief facts as claimed by assessee, are that the assessee HUF i.e., Mahadevan HUF is a Hindu Undivided Family and is assessed to income-tax with the Income Tax Officer, Non-Corporate Ward 3(4), Chennai. According to assessee, the HUF was formed on 07.07.1975 upon the marriage of its karta Shri R. Mahadevan with Smt. Bhavani Mahadevan. Out of marital knot, karta has two daughters. It was claimed by assessee that the assessee HUF, through various loans purchased land at Plot No.94, ARN Nagar, Korattur by way of sale deed dated 14.07.1994 in the name of Smt. Bhavani Mahadevan and land at Plot No.II, VGN Avenue, Sennerkuppam Village by way of sale deed dated 03.08.1995 in the name of Smt. Bhavani Mahadevan. It was claimed that the assessee HUF also purchased land at Plot No.1, VGN Avenue, Sennerkuppam Village by way of sale deed dated 09.10.1995 in the name of Shri R. Mahadevan. It was claimed that the assessee HUF had always intended the original assets, the above referred assets purchased in 1994 & 1995 to be part of the properties belonging to the assessee HUF and they were treated as such by the members of

assessee HUF. The assessee claimed that in the year 2002, the statement of affairs of assessee HUF for the year ending 31.03.2002 was prepared reflecting the original assets as properties belonging to assessee HUF. The assessee claimed that in the year 2012, these original assets were sold and proceeds therefrom were wholly utilized in the purchase of new asset being residential flat No.1B, New Door No.50, 4th Street, Abiramapuram, Chennai. The assessee claimed that this new asset having been purchased out of the consideration from sale of original assets belonging to assessee HUF and accordingly, the new asset also becomes the property of assessee HUF. It was intended that the statement of affairs of the HUF for the year ending 31.03.2012 reflecting the new asset as property belonging to the assessee HUF. The AO framed assessment u/s.143(3) of the Act for the assessment year 2012-13 and passed order dated 12.03.2015 accepting assessee's return of income. Subsequently, the PCIT issued show-cause notice alleging that the original assets were purchased respectfully by Smt. Bhavani Mahadevan and Shri R. Mahadevan in individual capacity and accordingly, the consideration received on account of sale of the aforementioned original assets, the provisions of section 64(2)(b) of the Act comes into play and the property sold has to be treated as transfer by individuals and not by the HUF. Therefore, the PCIT

held the assessment order passed u/s.143(3) of the Act by the AO dated 12.03.2015 as erroneous and also prejudicial to the interest of Revenue. The assessee contested this claim and stated that these three properties sold by the assessee are of HUF and the long term capital gain arising out of sale of these properties is invested in purchase of residential house at Abiramapuram and claimed deduction u/s.54F of the Act.

4. The PCIT was not convinced with the reply of assessee and he noted that the assessee has earned long term capital gain on account of sale of following three properties of individual Smt. Bhavani Mahadevan and Shri R. Mahadevan :-

- (i) House site of 1897 sq.feet at Sennerkuppam Village, Poonamallee purchased on 09/10/1995 – R. Mahadevan
- (ii) House site of 1788 sq.feet at Sennerkuppam Village, Poonamallee purchased on 03/08/1995 – Bhavani Mahadevan
- (iii) House site of 2520 sq.feet at Plot No.94, ARN Nagar, Korattur, Chennai purchased on 14/07/1994 – Bhavani Mahadevan

The PCIT noted that these three properties were purchased by assessee in their individual capacities because the HUF was having no nucleus at that point of time and assessee formed the HUF during the financial year 1999-2000 and thereafter these three properties were thrown into the assessee HUF. According to PCIT,

when these properties were subsequently sold and long term capital gain arising out of sale of these properties, the provisions of section 64(2)(b) of the Act comes into play and claim of deduction u/s.54 of the Act will not be allowed to the assessee. The PCIT held that the assessment order is erroneous and also prejudicial to the interest of Revenue and hence, he set aside the order of AO and directed to assess the assessee afresh in view of the above facts narrated by the PCIT. The PCIT subsequently held the assessment order as erroneous and prejudicial to the interest of Revenue vide para 7 & 8 as under:-

“7. Under the above circumstances as stated in para 6 above, the claim of the Assessee that the 3 properties have been purchased by the HUF is not backed by proper documentary evidences and hence rejected.

8. It is clear from the documentation that the properties have been purchased by the coparceners of the HUF in their individual capacity. If it were treated that the impugned properties were brought into the common HUF hotchpot and thereafter sold by the HUF, as per the provisions of S.64(2)(b), the liability to tax arises in the hands of the individuals. If the scheme of contributing to the HUF hotchpot is not taken into consideration, then the properties sold are that of the individuals. Either way, the taxation of LTCG and allowance of deduction u/s.54F in the hands of the assessee-HUF is not in accordance with law and allowing the same in the assessment order has resulted in an erroneous order, which is also prejudicial to the interest of revenue. “

Aggrieved, now assessee is in appeal before the Tribunal.

5. Before us, Id.counsel for the assessee reiterated the same facts and made his arguments. On the other hand, the Id.CIT-DR

heavily relied on the revision order passed by PCIT u/s.263 of the Act.

6. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the individual Smt. Bhavani Mahadevan had purchased the land at Plot No.94, ARN Nagar, Korattur by way of sale deed dated 14.07.1994 and land at Plot No.II, VGN Avenue, Sennerkuppam Village by way of sale deed dated 03.08.1995. Shri R. Mahadevan had purchased the land at Plot No.1, VGN Avenue, Sennerkuppam Village by way of sale deed dated 09.10.1995. During the course of hearing now, on query from the Bench, the Id.counsel for the assessee could not file any detail before us, what is the nucleus of the HUF during the period i.e., financial year 1994-95 & 1995-96. The Bench subsequently asked the following details:-

- (i) The proof that the assessee has obtained loans in the name of HUF.
- (ii) Any bank account of HUF where assessee has parked the loan funds or
- (iii) The HUF has any nucleus fund available with it from where the investment is made.

The Id.counsel for the assessee could not answer anything except making submissions that these properties were purchased in the individual name but held in the HUF status and intended to be held in the name of HUF. The Id.counsel for the assessee himself in its written submission dated 30.12.2016 before PCIT admitted that these properties were purchased by individuals as mentioned above in the year 1994 & 1995, well before the formation of HUF which was only in AY 1999-2000. It was stated in its reply that the properties were thrown into HUF during assessment year 1999-2000 and therefore, the provisions of section 64(2)(b) of the Act are applicable. The Id.counsel for the assessee before us stated that the returns of income of HUF were filed for assessment year 1998-99 and the statement of affairs were filed from assessment year 2002-03 with the Department. The Id.counsel for the assessee mainly harped on the fact that he got married on 07.07.1975 and HUF is formed on that very date. We may agree that the HUF might have formed on the day they got married but what is the nucleus available with the HUF. The Id.counsel for the assessee categorically denied having any nucleus till assessment year 1998-99. The properties purchased by individual in their individual name and from the individual source of income cannot be treated as property of HUF. Even the assessee could not prove any nucleus.

Once this is the position, as the assessee is unable to prove its case, it is presumed that it has rightly been held that these properties belong to these two individuals i.e., Smt. Bhavani Mahadevan and Shri R. Mahadevan in their individual capacity and not of the HUF. Accordingly, we are of the view that the PCIT's finding is supported by evidences that these properties by Smt. Bhavani Mahadevan and Shri R. Mahadevan are all in their individual capacities purchased in the year during 1994 & 1995. There is no evidence that these properties were purchased by assessee HUF i.e., Mahadevan HUF and in the absence of any evidence, we cannot reverse the findings of PCIT.

7. Secondly, the assessee has claimed the sale consideration out of these properties as long term capital gain in the hands of HUF and claimed deduction u/s.54F of the Act in respect of purchase of house property at Abiramapuram i.e., residential house or flat. We noted that PCIT has rightly held the assessment order as erroneous as well as prejudicial to the interest of Revenue. But, we noted that the PCIT has set aside the assessment order and directed the AO to reframe the assessment as per the provisions of law after considering the submissions and evidences, if any as per law. We

find no infirmity in the order of PCIT revising the assessment and setting aside the matter to the file of AO.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 15th June, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 15th June, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |