

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 515 & 528/JPR/2024  
निर्धारण वर्ष/Assessment Years :2011-12 & 2012-13

Sh. Suchet Singh Yadav HUF Ward No. 6, Near Police Station Behror, Alwar.	बनाम Vs.	Income Tax Officer, Behror.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAYHS8446N		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Sh. Vedant Agarwal (Adv.)  
राजस्व की ओर से / Revenue by : Shri Anup Singh (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 21/08/2024  
उदघोषणा की तारीख / Date of Pronouncement: 29/08/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

These two appeals are filed by the assessee and are arising out of the order of the Learned Commissioner of Income Tax (Appeals)-4, Jaipur both dated 29.11.2023 [ Here in after referred as "Ld. CIT(A)"] for the assessment years 2011-12 & 2012-13 respectively, which in turn arise from the orders dated 24.12.2018

& 26.12.2018 passed under section 147/143(3) of the Income Tax Act (Here in after referred as "Act") by the ITO, Behror.

2. Since the facts of these cases are identical and of the same assessee, we have heard these cases together with the consent of the parties and passing the order together. For the present discussion the bench feels that as facts are similar and grounds are similar therefore, for the present discussion the facts and grounds are taken from the folder of Sh. Suchet Singh Yadav HUF in ITA No. 515/JPR/2024 and this case is taken as lead case for deciding the issue raised in these appeals.

2.1 In ITA No. 515/JPR/2024 the assessee has raised following:-

- “1. On the facts and circumstances of the case and in law also Ld. Lower authorities grossly erred in not considering order of Id. CIT(A) and order of Honorable ITAT in the case of Suchet Singh Yadav.
2. On the facts and circumstances of the case and in law also Ld. Lower authorities grossly erred in taking and confirming cost of acquisition at Rs. 91,200/-.
3. On the facts and circumstances of the case and in law also Ld. Lower authorities grossly erred in not giving the deduction u/s 54F ignoring the directions of Ld. CIT(A) in appeal order that the deduction should be granted in the status of HUF after examining the facts & also ignoring the fact that assessee has made investment in the house out of HUF funds & have also claimed the deduction in the computation of income HUF.
4. That the appellant craves his indulgence to add, amend, alter or delete any or all of the ground of appeal at any time before decision of appeal.”

## 2.2 In ITA No. 528/JPR/2024 the assessee has raised following:-

- “1. On the facts and circumstances of the case and in law also Ld. Lower authorities grossly erred in not considering order of Id. CIT(A) and order of Honorable ITAT in the case of Suchet Singh Yadav.
2. On the facts and circumstances of the case and in law also Ld. Lower authorities grossly erred in taking and confirming cost of acquisition at Rs. 91,200/-.
3. On the facts and circumstances of the case and in law also Ld. Lower authorities grossly erred in not giving the deduction u/s 54F ignoring the directions of Ld. CIT(A) in appeal order that the deduction should be granted in the status of HUF after examining the facts & also ignoring the fact that assessee has made investment in the house out of HUF funds & have also claimed the deduction in the computation of income HUF.
4. That the appellant craves his indulgence to add, amend, alter or delete any or all of the ground of appeal at any time before decision of appeal.”

### **ITA no. 515/JP/2024**

3. At the outset of hearing, the Bench observed that there is delay of 79 days in filing of the present appeal by the assessee for which the Id. AR of the assessee filed an application for condonation of delay. The prayer of the assessee reads as under :

“ In this case the due date to file the appeal was 28.01.2024 but filed on dated 18.04.2024.

Your honour's the delay was because of long illness of Shri Suchet Singh, Karta of HUF. He was suffering from back pain and was advised complete bed rest from 04-january-2024 to 08-April-2024, copy of medical certificate & affidavit are attached herewith for kind perusal and verification.

It is therefore most respectfully prays that the delay of 79 days in filing the appeal may kindly be condoned in the interest of justice and the appeal may kindly be admitted.”

3.1 In support of the contentions so raised the Authorized person has filed an affidavit to support the contentions raised in the prayer for condonation of delay in filing the appeals.

3.2 The Id. AR of the assessee appearing in this appeal submitted that the assessee is serious on the duties and the delay of 79 days is on medical exigencies resulted the delay, which was beyond control. The bench noted that the assessee being HUF and his authorized signatory was suffering from medical illness and was advised rest and that resulted delay in filling the present appeal by 79 days. The reasons are supported by the evidence and affidavit filed by the assessee.

3.3. During hearing, the Id. DR objected to assessee’s prayer for condonation of delay. But at the same time did not object to the facts so argued by the Id. AR of the assessee.

3.4 We have heard both the parties and perused the materials available on record. The Bench Noted that the reasons advanced by assessee for condonation of delay of 79 days are sufficient to condone the delay and it has merit based on the affidavit and

evidence so placed on record. Thus, we concur with the submission of the assessee and condone the delay of 79 days in filing the appeal by the assessee as the assessee has sufficient cause. We also get support from the decision of the apex court in the case of Collector, Land & Acquisition Vs. Mst. Katiji & Others 167 ITR 471(SC) wherein it was directed the other courts to consider the liber approach in deciding the petition for condonation as the assessee is not going to achieve any benefit for the delay in fact the assessee is at risk.

4. The brief fact as culled out from the records is that survey u/s 133A of the IT Act, 1961 was carried out at the business premises of the assessee firm M/s Ganpati Plaza on 29/30.08.2013.

While survey proceedings some sale deed / sale agreements were found at the business premises at M/s Ganpati Plaza in which the assessee is also a partner. These sale deeds / sale agreements were impounded. Perusal of these sale deed / sale agreement revealed that the assessee sold pieces of land situated in khasara no 698 near Jilani Mata Mandir, Behror during the F.Y. 2010-11, 2011-12, 2012-13 and 2013-14. Ld. A.O. made an assessment u/s 143(3) at Rs 1,53,11,568/- on a/c of long-term

capital gain, on sale of plots consideration of Rs. 1,59,60,000/-. In the hands of Shri Suchet Singh in Individual capacity. That order was challenged before the Id. CIT(A), who directed the AO while deleting the addition of Rs. 1,53,11,568/- in the hands of individual that the long term capital gain in the hands of individual capacity is not chargeable into his hands but is to be taxed in the case of the HUF. As direction notice u/s. 148 of the Act was issued to the HUF assessee on 28.03.2018 and in response the assessee has filed the return of income declaring total income at Rs. 1,56,630/-. During the proceeding the assessee did not produced supporting evidence regarding indexed cost of sale of land and deduction claimed u/s. 54F of the Act. Therefore, Id. AO based on the direction of the Id. CIT(A) taxed the long term capital gain based on the information available at Rs. 60,33,400/- in the return of income and accordingly assessed the income at Rs. 61,90,030/-.

5. Aggrieved by the above order of the Assessing Officer the assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised by the assessee, the relevant finding of the Id. CIT(A) is as under:-

“6.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the order for the year under consideration. The contention/submissions of the appellant are being discussed and decided as under:-

6.3 The appellant has made contention that Ld A.O. also erred in taking cost of acquisition @ Rs. 66.68 per square yard (Total at Rs. 91200/- for 1367.69 square yards) as on 01.04.1981 as against Rs. 100/- per square yard as claimed by the assessee in the computation of income. The Id. AO has mentioned in assessment order that he has taken cost of acquisition as per copy of sale deed obtained from DIG Stamps.

6.4 The learned assessing officer has mentioned in the assessment order that the cost of acquisition has been worked out as per the copy of sale deed obtained from DIG stamps. It is the appellant who has not complied with and responded to various notices during the assessment proceedings as mentioned in the assessment order. The appellant has not substantiated the working of the cost of the purchase of the land at the rate of Rs. 100 p.s.y. claimed by him with the support of documentary evidences. There is no basis to upheld the cost of acquisition worked out by the appellant.

This ground of appeal is treated as dismissed in above terms.

8.3 The appellant has made contention that Id. AO also erred in not allowing the deduction u/s 54F as claimed by the assessee in the return of income. Hon'ble CIT(A) & Hon'ble ITAT have also given instruction for the same in their respective orders. It is important in this case to note that initially the assessment was done in the hands of the individual assessee and it was the argument and claim of the appellant that the assessment needs to be done in the hands of the HUF however now in the assessment in the case of the HUF the appellant has claimed the deduction of the section 54F of the Act whereas the claimed investment has been done by the individual assessee. When the land sold by the HUF could not be assessed in the hands of the individual then how the investment done by the individual makes the HUF entitled for deduction under section 54F. Further, why the construction and the ownership is not in the name of HUF also has not been clarified by the appellant. Judicial exception from law cannot be claimed as a matter of right and acceptance of deviation depends upon cogent reasoning and justification made along with supporting evidences behind such reasoning and justification for the deviation.

8.4 The individual assess could have constructed the residential house for his own purposes. The appellant has not proved that the property

was constructed by the individual on the direction of the HUF and the same funds which were received by the HUF from selling of the property have been used by the individual in purchase and construction of the property. The appellant has not shown that there was a partition in the HUF that the assets of the HUF were distributed amongst its coparceners as otherwise the individual assessee could not have received the funds and could not have invested the same in the residential house which is in his individual name and not in the time of the HUF.

8.5. On perusal of valuation report submitted in appeal, it is seen that it is not mentioned on what basis the valuer decided the construction expenditure made during the period of Dec 2010 to Dec 2011. The details of bills & voucher regarding expenses of labour, material purchase, contractor etc. are not mentioned in the valuation report. It appears the valuation report is prepared only for convenience of appellant. Since the construction was done when the deduction under section 54F was claimed the appellant was required to show the investment with the support of bills and vouchers and payment evidences and not with the support of valuation report as the document like valuation report are used in the scenarios like when the original evidence is are not available the matter being very old etc. The appellant is required to prove the actual amount invested as per section 54F whereas the valuation report gives only the approximation of the valuation of the property and not even the actual dates and periods of the expenditure. Whereas such factors are very crucial for the purposes of section 54F wherein a specific time band is also provided for the period of investment. The appellant has not shown that the investment in the house was done during that period and not before that and not after that. It is a settled legal principle that exemption provisions are to be interpreted strictly and the claimant is required to satisfy the provisions in letter and spirit which the appellant has not done at all. In view of the above discussion, this ground of appeal is dismissed.”

6. The assessee aggrieved from the finding so recorded by the Id. CIT(A) has preferred the present appeal on the grounds as stated herein above. To the support the contention raised the Id. AR of the assessee filed the following evidence:-

S. No.	Particulars	Page No.
1.	Copy of order of CIT(A) in the case of Sh. Suchet Singh Yadav dated 26.02.2016 for A.Y. 2011-12.	1-32
2.	Copy of order of Hon'ble ITAT, Jaipur Bench in the case of Sh. Suchet Singh Yadav, dated 24.10.2017 for A.Y. 2011-12.	33-39
3.	Copy of ITR and computation of income	40-41
4.	Copy of valuation report	42-49

7. The Id. AR of the assessee in addition to the paper book so filed submitted that when the capital gain is assessed in hands of the HUF entity instead of the individual the relevant benefit u/s. 54F claimed by the assessee coupled with the cost of acquisition cannot be denied to the assessee. To drive home to this contention the Id. AR of the assessee also relied upon the finding so recorded in the case of Shri Suchet Singh Yadav (Individual) which reads as under :

“6.5 I have already given a finding that the land sold belongs to the HUF of the appellant and therefore, any profit / gains made on sale of such land have to be assessed in the hands of the HUF. Accordingly, the issue of deduction u/s. 54F of the IT Act has to be examined by the AO, while assessing income in the hands of the HUF.”

But, while deciding the issue by the Id. AO held that the assessee has not submitted any details. Whereas the Id. CIT(A) has taken a complete different view of the matter stating that ;

8.3 The appellant has made contention that Id. AO also erred in not allowing the deduction u/s 54F as claimed by the assessee in the return of income. Hon'ble CIT(A) & Hon'ble ITAT have also given instruction

for the same in their respective orders. It is important in this case to note that initially the assessment was done in the hands of the individual assessee and it was the argument and claim of the appellant that the assessment needs to be done in the hands of the HUF however now in the assessment in the case of the HUF the appellant has claimed the deduction of the section 54F of the Act whereas the claimed investment has been done by the individual assessee. When the land sold by the HUF could not be assessed in the hands of the individual then how the investment done by the individual makes the HUF entitled for deduction under section 54F. Further, why the construction and the ownership is not in the name of HUF also has not been clarified by the appellant. Judicial exception from law cannot be claimed as a matter of right and acceptance of deviation depends upon cogent reasoning and justification made along with supporting evidences behind such reasoning and justification for the deviation.

Thus, there are contradicting view on the issue and thus, the Id. AR of the assessee prayed the assessee may be given one chance to clarify all the facts before the Id. CIT(A) as there was non submission of the relevant details before the Id. AO and therefore, prayed to give one chance before the Id. AO.

8. The Id. DR is heard who has relied on the findings of the lower authorities and submitted that this is the second round of litigation and if the assessee's request is accepted it would be third round of litigation. The Id. DR also submitted that the when the investment is made by the individual how the deduction be given to

the HUF. The Id. DR did not supported the reasons getting the third round by filling the relevant documents.

9. We have considered the rival contentions, perused the material available on record. The bench noted that this is the second round of litigation wherein the finding recorded by the Id. CIT(A) in the case of the assessee with that of the Id. CIT(A) in the case of individual assessee are contradictory. As regards the issue of allowing cost of acquisition and deduction u/s. 54F of the Act the Id. AO did not consider due to non-submission of the details by the assessee. Whereas Id. CIT(A) has given the different finding without commenting upon the records of the assessee. Thus, the bench feels that the issue of allowability of the cost of acquisition and deduction u/s. 54F of the Act needs to be examined based on the merits of the case. Even the assessee when objected by the Id. DR about the allowability of the claim of cost of acquisition stated that the assessee has filed the valuation report and regards the deduction u/s. 54F of the Act the investment made by the assessee the matter is required to be examined based on the provision of section 54F of the Act and therefore, we considered it deem fit that

the assessee be given a fair chance to represent the merits of the case and therefore, we considered it fit to remand the matter back to the file of the Id. AO with a direction to decide the issue of allowability of cost of acquisition and allowability of deduction u/s. 54F of the in accordance with the law and at the same time considering the non-submission of the details by the assessee we considered it fit to levy the cost to the assessee for each of the year for an amount of Rs. 1000/- each to be deposited in the “Prime Minister Relief fund” and necessary receipt be provided to the Id. AO when the Id. AO start the set aside proceedings.

10. The fact of the case in ITA No. 528/JPR/2024 is similar to the case in ITA No. 515/JPR/2024 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No. 528/JPR/2024 are equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 515/JPR/2024 for the Assessment Year 2011-12 shall apply mutatis mutandis in the case of Shri

Suchet Singh Yadav HUF in ITA No. 528/JPR/2024 for the Assessment Year 2012-13.

In the result, the appeals of the assessee in ITA no. 515/JPR/2024 and 528/JPR/2024 are allowed for statistical purposes.

Order pronounced in the open court on 29/08/2024

Sd/-  
( संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

Sd/-  
( राठौड कमलेश जयंतभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 29/08/2024

\*Santosh.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Sh. Suchet Singh Yadav, Alwar.
2. प्रत्यर्थी / The Respondent- ITO, Behror.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA Nos. 515 & 528/JPR/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar