आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।

IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं/.ITA No.387/RJT/2025
निर्धारणवर्ष /**Assessment Year: 2017-18**

Kunal Rajendra Mashru c/o. Pradip Corporation, D-3, Jeevan Jyot, Cawasji Patel Street, Mumbai – 400001, Maharashtra PAN : AFHPM1835K	बनाम Vs.	**Assistant Commissioner of Income-tax** Circle-1, Junagadh
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Abhishek Choksy, AR
राजस्व की ओर से/Revenue by : Shri Abhimanyu Singh Yadav, Sr.DR

सुनवाई की तारीख/Date of Hearing : 05/08/2025
घोषणा की तारीख/Date of Pronouncement : 03/11/2025

ORDER

Per Dinesh Mohan Sinha, Judicial Member:

Captioned appeal filed by assessee pertaining to Assessment Year 2017-18, is directed against the order passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") by the LD. Commissioner of Income-tax (Appeal), ADDL/JCIT(A)-3, Chennai (in short 'CIT(A)'), dated 29.05.2025, which in turn arises out of assessment order passed by Assessing Officer u/s. 143(3) of the Act on 07.11.2019.

2. The grounds of appeal raised by the assessee are as under:

"1. The Ld. CIT(A) erred in law and in fact in passing the appellate order u/s. 250 of the Act in violation of principles of natural justice:

(a) by not giving opportunity to be heard before dismissing the appeal

(b)by not following the supreme verdict that where two opinions are possible.

One in favour of the assesse shall be taken into consideration.

2. The Ld. CIT(A) erred in law and in facts in confirming addition of 10,00,000/- u/s. 56 of the Act on account of receipt by the appellant from the HUF [Mr. Rajendra H. Mashru (HUF).) of which the appellant was the member.

2.1. The Ld. CIT(A) has erred in law in facts in relying on the decision of Gyanchand M. Baradla v. ITO (1072/Ahd/2016) without appreciating following several judicial pronouncements which are well analysed. well established and well accepted and in favour of the appellants

2.1.1. Vineet kumar Bhalodia v. ITO (2011) (Rajkot) (11 taxmann.com

2.1.2 Pankil Garg v. Pr. CIT (2019) (Chandigarh) (108 taxmann.com 337)

2.1.3. DCIT v. Ateev V. Gala (Mumbai) (ITA No. 1906/Mum/2014)

2.1.4. Biravelll Bhaskar Karimnagar v. ITO (Hyderabad) (ITA No. 38/Hyd/2015)

2.1.5. Harshadbhal Dahyalal Valdhya (HUF) v. ITO (Ahmedabad) (144 ITD 605)

2.1.6. Hemal D. Shah v. Dy. CIT (Mumbai) (ITA No. 1906/Mum/2014)

2.2 The Ld. CIT(A) has erred in law in facts in not appreciating that HUF is nothing but a group of relatives and any gift received from a relative /

group of relatives is excluded from the purview of section 56(2)(vii) of the Act.

2.3 The Ld. CIT(A) has erred in law and in fact in not appreciating the alternative contention of the appellant that the receipt is capital receipt and is exempt under section 10(2) of the Act.

3. The appellant craves leave to add to, alter, amend and/or delete in all the foregoing grounds of appeal."

3. The brief facts of the case are that the assessee is an individual and has e-filed his Return of Income vide acknowledgment no. 475065760210318 for the F.Y. 2016-17 relevant to A.Y. 2017-18 on 21.03.2018, declaring his total income at Rs. 1,28,88,680/- under regular provisions of IT Act, 1961. The same was processed u/s. 143(1) of the Income-tax Act, 1961 by CPC Bangalore. Thereafter, the case was selected for Limited Scrutiny under CASS and E- notice u/s. 143(2) of the Act was issued on 09.08.2018 and was duly served on the assessee. E-notice u/s. 142(1) of the Act, along with questionnaire, was issued on 15.05.2019 which was duly served upon the assessee. Another E-notice u/s. 142(1) of the Act was issued on 11.09.2019, which was duly served upon the assessee. E-Show Cause Notice was issued on 25.09.2019 which was duly served upon the assessee. In response to the said notices, assessee filed e-submission from time to time. The details furnished are perused and verified. During the year under consideration, the assessee had derived salary income and income from other sources.

4. During the course of assessment proceedings, the AO noted from the assessee's capital account that the assesse has shown receipt of gift from M/s. Rajendra H. Mashru (HUF) of Rs. 10,00,000/- during the F.Y. relevant to A.Y. 2017-18. The assesse was asked to furnish details in respect of the receipt of gift from the Rajendra H Mashru (HUF). The

assesssee furnished details including Gift Deed from M/s. Rajendra H Mashru (HUF), wherein it was confirmed that of gift of Rs. 10,00,000/- was given to the assesse and also furnished return of income along with capital account of the Donor M/s. Rajendra H. Mashru (HUF). As per provisions of section 56(vii) of the Act, a gift received (more than Rs. 50,000/-) by an individual from a HUF is taxable as income from other sources because the meaning of 'relative' in the case of an individual does not include HUF. Therefore, the gift received by him of Rs. 10,00,000/- from the HUF M/s. Rajendra H. Mashru (HUF) was added to the total income of the assessee.

5. Aggrieved by the order of the AO, the assessee came in appeal before the Ld. CIT(A) who dismissed the assessee's appeal by observing as under:

> *"7.7. Therefore, relying the above judicial decision, it is held that, the assessing officer has rightly held that, the gift of Rs. 10,00,000 received by the assessee from M/s. M. Rajendra H Mashru HUF is taxable as Income from Other sources and proviso of sec 10(2) is not applicable in the assessee's case. In view of the above, discussion, the order of the assessing officer treating the sum of Rs. 10,00,000/- as Income from other source is upheld. Accordingly, the appeal is dismissed."*

6. Aggrieved by the impugned order of the Ld. CIT(A), the assessee came in appeal before us.

7. During the course of herring, the Learned AR submitted that this appeal is filed by the assessee against order of Learned Joint Commissioner of Income Tax (Appeals)-3, Chennai ["Ld.JCIT(A)"] dated 29.05.2025 for the A.Y.2017-18. The case was selected for limited scrutiny and Assessment Order was passed u/s. 143(3) of the Income-tax

Act, 1961 ("the Act") by making addition of INR 10,00,000/- on account of gift received by assessee from Hindu Undivided Family (HUF) of his father.

8. The Ld. AR of the assesse submitted that the family was HUF and each of HUF family members have a separate legal status so the father should be considered as a relative. In this aspect, the assessee relies on the decision of the Hon'ble Ahmedabad Tribunal in the case of Gyanchand M. Bardia v. ITO [ITA No. 2244/Ahd/2017] (AY 2014-15) dated 25.03.2022 wherein it has been held that HUF property belongs to all its members and a payment by HUF to a member is not taxable under section 56(2) of the Act.

9. Hon'ble Chandigarh Tribunal in the case of Shri. Pankhil Garg v. The Pr. CIT [ITA No.773/Chd/2018] dated 17.07.2019 for AY 2011-12 held that the amount received by a member/karta from his HUF is outside the purview of taxation for the reason that such a member had a pre-existing right in the property of HUF and therefore, it cannot be said to be a gift without consideration by the HUF or by other members.

10. On the other hand, the Learned DR, submitted written submission, during the course of hearing. Which is reproduced below;

ARGUMENT ON BEHALF OF REVENUE: STRICT INTERPRETATION OF TAX EXEMPTIONS - S. 56(2)(vii) AND SCOPE OF 'RELATIVE'

1. *The present appeal concerns the validity of exemption claimed under Section 56(2)(vii) of the Income-tax Act, 1961, wherein the assessee received immovable property/monetary gift from a Hindu Undivided Family (HUF) and claimed exemption on the ground that the HUF comprises "relatives".*
   2. Section 56(2)(vii) provides that certain sums or property received without consideration by an individual or HUF are chargeable to tax unless they are received from a "relative".

3. The definition of "relative", as provided in Explanation (e) to Section 56(2)(vii), is exhaustive and not illustrative. It includes only specific relations in the context of an individual, such as spouse, brother, sister, lincal ascendants and descendants, etc.
4. Notably, the term "HUF" is not mentioned in the definition of "relative". Therefore, an HUF cannot be treated as a relative for the purposes of claiming exemption under Section 56(2)(vii) in case of an individual.

Binding Precedent: Constitution Bench Judgment

5. The Hon'ble Supreme Court in Commissioner of Customs (Import) v. Dilip Kumar and Company, (2018) 9 SCC 1/(2018) 361 ELT 577 (SC) decided by a 5-Judge Constitution Bench, authoritatively laid down the law as follows:

"Exemption provisions must be strictly construed. The burden of proving applicability is on the assessee. In case of ambiguity in exemption clause, it must be interpreted in favour of the Revenue." (Para 22, 23, 29 & 32 of the Judgment)

6. The Court further held that where the language of an exemption is plain. no additional words or classes can be read into the statute even if there appears to be a legislative intent.

Application to Present Case

7. In the present case:

- *The definition of "relative" under Explanation (e) is clearly limited to certain individuals related to the assessee,*
- *HUF is a separate legal entity and not a "relative" under the statutory definition.*
- *Therefore, the exemption claimed for receipt from HUF is not sustainable in law and is outside the scope of Section 56(2)(vii).*

Binding Nature under Article 141-SC Judgment Prevails

8. As per Article 141 of the Constitution of India,

"The law declared by the Supreme Court shall be binding on all courts within the territory of India."

9. The binding nature of the Constitution Bench judgment in Dilip Kumar (supra) overrides any previous or subsequent contrary decision by coordinate benches of High Courts or ITAT, even if they have taken a liberal view of tax exemptions or construed "HUF as a relative",
10.Hence, any reliance by the assessee on contrary interpretations by earlier or later courts or tribunals order would be non-est in law post 30.07.2018, the date of the Constitution Bench judgment.

Prayer

In view of the above:

- *The claim of the assessee for exemption under Section 56(2)(vii) by treating HUF as a "relative" is untenable, as it violates both the literal language of the statute and the principle of strict interpretation of exemptions laid down in binding precedent.*
- *It is respectfully submitted that the exemption claimed by the assessee may be disallowed, and the impugned relief granted by the lower authority may be reversed.*

11. We have heard both the parties and perused the documents filed before us. During the course of assessment proceedings, the assessee submitted Paper-book contended Balance-Sheet and Capital Account of the assessee for A.Y. 2017-18 and also filed Balance Sheet and Capital Account of Rajendra K. Mashru (HUF) who has granted the gift of Rs. 10 Lakhs and computation of income was also filed and tried to establish that the gift was given by Rajendra K. Mashru to the assessee. We note that the submission of the assessee;

i. Section 56(2) of the Act. It is a charging section that seeks to tax, the receipts of money or property without consideration, subject to specific exclusions, such as receipts from "relatives". (b) The Explanation defining "relative" for the purposes of this section is exhaustive but not ambiguous, and the term has consistently been

interpreted to mean that gifts from family members either directly or through the HUF do not attract tax under this provision.

ii. HUF as a Group of Relatives. According to the Ld. DR the word "HUF" is not specifically mentioned in the definition of "relative", it must be excluded. However, it is clarified that the HUF is not an artificial person, but a natural group of individuals united by family and lineage.

This is supported by the Hon'ble Apex Court in Surjit Lal Chhabra v. CIT (1975) 101 ITR 776 (SC), where it was held that an HUF is a composite family unit consisting of males, females and children all descended from a common ancestor. It is not a creature of statute but a creature of custom and personal law.

Thus, when a gift is made by an HUF, it is in fact a gift made by a group of relatives, and hence the intent and spirit of section 56(2) of the Act is not to tax the family gifts. It is settled law that beneficial and remedial provisions should be liberally construed to advance the purpose of the legislation. Section 56(2) of the Act, to the extent that it excludes gifts from relatives.

Following judgements were relied on:-

i. Hon'ble Apex Court in case of Union of India vs Onkar S Kanwar (2002) 258 ITR 761 (SC);

ii. Hon'ble Apex Court in case of CIT vs Vegetable Products Limited 88 ITR 192 (SC).

In both the aforesaid judgements, the Hon'ble Apex Court has ruled that where a provision is intended to benefit the assessee or

promote genuine economic or family arrangements, it must be interpreted liberally and not restrictively.

CBDT Circular No. 1/2011 dated 06.04.2011, highlights that the provision of section 56(2) (vii) of the Act were Introduced as a counter evasion mechanism to prevent laundering of unaccounted income. The gifts received from relatives have been kept out of the purview of this provision because the possibilities of laundering of unaccounted income do not exist or is very less.

Therefore, taxing such gifts received from HUF consisting of members who all are relatives would not be in consonance with the object of the provision. Further the intent of the provision was not to penalize genuine transfers within families.

A gift from an HUF made to a member is a culturally and legally recognized family transaction, and taxing such a gift would defeat the objective of the provision.

12. We further note that the Ld. DR has relied on the judgment of Hon'ble Supreme Court in the case of Commissioner of Customs vs. Dilip Kumar & Company (2018) 9 SCC. For this judgment, Ld. AR submitted that this reliance is factually and legally midirected and the principles laid down in Dilip Kumar & Company (supra) are not applicable in the present case;

(a) The judgment in Dilip Kumar (supra) was rendered in the context of Indirect taxation under the Customs Act, dealing with exemption notifications issued under delegated legislation. The Hon'ble Apex

Court held that in case of ambiguity in exemption notifications, the interpretation must favour the Revenue.

(b) In contrast, the present case involves the interpretation of a substantive provision of the Act namely, explanation to section 56(2) of the Act which defines "relative" and provides for exclusion from tax in respect of genuine family gifts. Therefore, the foundational context of Dilip Kumar (supra) is wholly distinguishable.

13. That the assessee further relied on the judgement of the Hon'ble ITAT's has been consistently holding such sums of money given by HUF to its members/coparceners are not liable to tax u/s. 56(2)(vil) of the Act, in a plethora of decisions as under.

a. Recent decision of Hon'ble Kolkata Tribunal in the case of Aakash Sureka v. DCIT (Central Circle)-3(3), Kolkata [I.T. (S&S) A No. 27 & 28/Kol/2024] dated 16.04.2025 for AY 2014-15 and AY 2015-16;

b. Hon'ble Ahmedabad Tribunal in the case of Harshadbhai Dahyalal Vaidhya (HUF) v. The ITO [ITA No. 1527/Ahd/2010]

c. Hon'ble Mumbai Tribunal in the case of Shri Hemal D. Shah v. DCIT-25(3) [ITA No.2627/Mum/2015]

d. Hon'ble Hyderabad Tribunal in the case of Mr. Biravelli Bhaskar Karimnagar v. Income Tax Officer Ward-4 [ITA No.398/Hyd/2015]

e. Hon'ble Mumbai Tribunal in the case of DCIT-17(2) v. Ateev V. Gala [ITA No.1906/Mum/2014]

f. Hon'ble Hyderabad Tribunal in the case of ITO Circle-16(2) v. Dr. M. Shobha Raghuveera [ITA No.47/Hyd/2013]

we note that the assessee has filed gift deed, computation of income/Balance sheet. The assessee has not submitted the affidavit in support of accepting the gift and also not submitted bank statement/income tax returns of doner and done. We hereby, direct the AO to verify the gift received by the assessee and also verified that HUF is assessed to income tax or subjected to tax as per provision of income tax rule. The assessee is member of HUF and the money received in as capital receipt.

There are two way involved in the transaction that is amount is given and the amount received. We relate to provision of income tax Act. The manner in which the amount received from HUF and HUF is given the amount.

After considering the above, facts and circumstances of the case. We therefore, set aside the order of the Ld. CIT(A)/lower authority and the case sent back to the file of the AO for proper adjudication after due investigation and verification in respect of gift amount of Rs. 10,00,000/-.

14. In the result, the appeal filed by the assessee is allowed for statical purpose.

Order is pronounced in the open court on 03/11/2025

Sd/-	**Sd/-**
(Dr. Arjun Lal Saini)	**(Dinesh Mohan Sinha)**
Accountant Member	**Judicial Member**

राजकोट /Rajkot
दिनांक/ Date: 03/11/2025

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)/(NFAC), Delhi.
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेशसे,

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot