

HUF is entitled for sec. 54F exemption even if new property is registered in name of 'Karta'

Summary – The Chennai ITAT in a recent case of Shri Puranchand & Family (HUF), (the Assessee) held that where assessee-HUF used its capital gain from sale of diamonds to purchase a property, even though it was registered in individual name of Karta, property would belong to HUF; HUF would be eligible for exemption under section 54F

Facts

- The assessee-HUF sold diamonds and the long term capital gain arising from such sale was used to purchase a house property with three other coparceners of HUF. The sale deed was executed in the name of the HUF. The assessee claimed exemption under section 54F on the ground that the sale proceed of diamond was utilized by assessee for purchasing the property.
- The Assessing Officer disallowed the claim of exemption on three grounds; First, the capital asset was purchased in the individual name of coparcener of HUF; second, borrowed funds were used for purchase of the new asset and not the sale proceeds of the diamond; and third, there was no construction on the new asset.
- On appeal, the Commissioner also upheld the order of the Assessing Officer.
- On second appeal:

Held

- As regards the investment made in the individual capacity, even though HUF is an independent assessable unit under Income-tax Act, under the common law, HUF cannot be considered to be a legal entity. The HUF has to be represented through any one of the coparceners. Therefore, when the assessee HUF invested the funds in the name of any one of the coparcener, it has to be construed that the investment was made in the name of HUF. When the nucleus of the HUF fund was used for purchase of a property in the name of any one of the coparcener, the property belongs to the HUF, even though the property was registered in the individual name of one of the coparcener. The property belongs to all the coparceners in equal shares as members of HUF. Therefore, the Assessing Officer is not justified in rejecting the claim of the assessee especially, when the investment was made in the name of Karta of HUF.
- Now coming to second reason for disallowance of claim of the assessee, the Assessing Officer found that only the borrowed funds are used for purchase of new asset. As rightly submitted by the representative for the assessee, provisions of section 54F requires the assessee to purchase a property one year before the date of the sale or two years after the date of the sale of asset. If the assessee could not invest within the time frame provided in the Act, the same has to be deposited in any one of the capital gain account within the due date provided for filing the return of income

under section 139(1). No one could expect the assessee to utilize the sale proceeds of the capital asset or the capital gain arising from such sale before the date of the sale of the capital asset. The assessee cannot have any sale proceeds before the date of the sale. Therefore, this Tribunal is of the considered opinion, when the assessee borrowed the funds and utilized in purchasing the capital asset and thereafter uses the sale proceeds or capital gain for repaying the loan borrowed, that would amount to sufficient compliance of the requirement of section 54F of the Act. Therefore, merely because the borrowed funds were used when the property was purchased before the date of the sale of asset, this Tribunal is of the considered opinion, this cannot be a reason for disallowing the claim of the assessee.

- Now, coming to the last reason for disallowance by the Assessing Officer that no construction was made, admittedly, the assessee has purchased a land and building. Therefore, it is not a case of new construction. The assessee claims that the building was renovated to make it fit for human habitation after purchase. This Tribunal is of the considered opinion, when the assessee has purchased a building and made some investment for making it fit for human habitation, the same has to be treated as part of the investment from out of the capital gain and the Assessing Officer is not justified in rejecting the claim of the assessee on the ground that the assessee has not filed any proof/plan from the Corporation of Chennai. For the purpose of renovation and maintenance, the Corporation may not give any approval or planning permission. The assessee has to necessarily obtain the planning permission and building approval in case there was new construction or an additional construction over and above the existing building. In the case before us, it is not the case of the assessee that there was additional construction or new construction. The admitted case of the assessee that the existing building was made it fit for human habitation. Therefore, Assessing Officer is not justified in disallowing the claim of the assessee.
- In view of the above, the orders of both the lower authorities are set aside and the addition is deleted. The Assessing Officer is directed to allow the claim of exemption under section 54F, to the extent of the amount invested on or before the date of filing of return of income as provided under section 139(1).