आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ सी, अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

श्री मुकुल कुमार श्रावत, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष।

BEFORE SHRI MUKUL Kr.SHRAWAT, JUDICIAL MEMBER And SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.1527/Ahd/2010

(**निर्धारण वर्ष /** Assessment Year : 2005-06)

Harshadbhai Dahyalal Vaidhya (HUF) Kharikui Tal.Kheralu – 384 325 Dist.Mehsana	**बनाम**/ Vs.	The ITO Mehsana Ward-4 Mehsana
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से / **Appellant by** :	Shri M.K.Patel
प्रत्यर्थी की ओर से/**Respondent by** :	Shri D.K.Singh, Sr.D.R.

सुनवाई की तारीख / **Date of Hearing** : **26/03/2013**

घोषणा की तारीख /**Date of Pronouncement** : **26/4/2013**

आदेश / O R D E R

PER SHRI MUKUL Kr. SHRAWAT, JUDICIAL MEMBER :

This is an appeal filed by the Assessee arising from the order of ld.CIT(Appeals)-Gandhinagar dated passed for A.Y. 2005-06 and the grounds raised are reproduced below:-

(1) That on facts and in law, the learned CIT(A), has grievously erred in confirming addition of Rs.7,00,000/- u/s.56(2) of the Act.

(2) That on facts and in law, it ought to have been held that the provisions of section 56(2) of the Act are not applicable.

(3) Without prejudice the learned CIT(A) has grievously erred in holding that the transfer of money from individual to HUF account is a gift.

(4) Without prejudice, it ought to have been held that the appellant's case is covered by the exception provided in section 56(2)(v) itself.

2. Facts in brief as emerged from the corresponding assessment order passed u/s.143(3) of the IT Act dated 30/03/2007 were that the assessee is assessed to tax under the status of "HUF". Further, it was noted by the AO that the HUF consists three coparcener. It was noted by the AO that an amount of Rs.7 lacs was introduced in the capital account. In support, the assessee has furnished a gift deed dated 1.10.2004 according to which, as per AO, one Shri Ishwarlal Ambalal Vaidhya made a gift of Rs.7 lacs to HUF. The AO's objection in this regard was as under:-

"Sub-section (v) to section 56(2) of the Income-tax Act, 1961 provides that any sum received without consideration by an Individual or HUF from any person on or after the 1st day of September, 2004 the income shall be chargeable to income tax under the head "Income from Other sources" and therefore, the amount is not an exempted income of the HUF. Definition appended below that section defines words "Relative" which clearly indicate that such relationship is applicable only in the case of individual and not to the HUF. Accordingly, gift accepted for and on behalf of HUF does not covered within the provision of that section. The assessee was therefore, requested to show cause vide letter dated 14/03/2007 as to why an amount of Rs.7,00,000 should not be treated in the hands of HUF as income from "Other sources u/s.56" of the Income-tax Act, 1961. Neither the assessee filed any written reply not his representative is attended to explain it. The assessee filed to avail this opportunity, it is therefore held that the assessee was not in a position to

explain or filed his submission. I have, therefore, no alternative but to add an amount of Rs.7,00,000 as income from "Other Sources" u/s.56 of the Income-tax Act. Penalty proceedings u/s.271(1)© of the Income-tax Act initiated separately for furnishing inaccurate particulars of his income."

2.1. Finally, the said amount of Rs.7 lacs was taxed in the hands of the assessee-HUF. The matter was carried before the first appellate authority.

3. In the first round of appeal due to non-compliance, the ld.CIT(A) had passed an *ex-parte* order dated 24/1/2008 which was challenged before the Tribunal. The Respected Co-ordinate Bench "D" ITAT Ahmedabad vide an order dated 22/08/2008 in ITA No.1341/Ahd/2008 for AY 2005-06 has restored the issue back to the file of the CIT(A) with the direction to provide a reasonable opportunity to the assessee. In consequence thereupon, the appeal was then decided by ld.CIT(A) afresh on merits. It is worth to mention that the ld.CIT(A) has also called for a **Remand Report** from the AO. The assessee has explained that a gift was received from Ishwarlal Ambalal Vaidhya of Rs.7 lacs on 1/10/2004 on behalf of the HUF. It was also claimed that there was a relationship between the donor and the donee as prescribed in the *Explanation* to section 56(2)(v) of the Act. The gift was received from the brother of parents, hence within the definition of "Relatives" as prescribed in the *Explanation*. There was a change in the stand on the part of the assessee that the gift was not made to Harshad D.Vaidhya-HUF but the gift was made to Harshad D.Vaidhya-individual. Because of the said change, the assessee has also revised the grounds of appeal

before ld.CIT(A). As far as the transaction was concerned, it was informed that the said sum of Rs.7 lacs was gifted by the donor, namely Ishwarlal Ambalal Vaidhya vide cheque No.520601 of bank of Baroda which was given to Harshad D.Vaidhya and deposited by him in the individual account of BOB. It has also been explained that the HUF had received the said sum on 23/10/2004 vide cheque No.3436 of Kheralu Nagarik Sahakari Bank Ltd. of Rs.7 lacs from the individual account of Harshadbhai Dahyabhai Vaidhya. There is a reference in the order of CIT(A) of a statement recorded on oath of Shri Ishwarlal Ambalal Vaidhya He has stated that he is a retired personand made a gift to his nephew (son of his elder brother) of Rs.7 lacs i.e. to Shri Harshadbhai D.Vaidhya on 1.10.2004 vide cheque No.520601 of Bank of Baroda. He has also stated in the statement that a gift deed was prepared and the said amount was gifted to Harshadbhai in HUF capacity. Ld.CIT(A) has discussed various statements as also the remand report in detail. However, at the end, he has held that the transaction was hit by the provisions of section 56(2) of the Act and taxable in the hands of the assessee, for ready reference the relevant paragraph is reproduced below:-

> *"10. The definition of relative in section 56(2) is entirely in context of an individual. From the arrangement that the donor and appellant had undertaken once the gift had been made to Shri Harshad D.Vaidya in his individual capacity, the said money, though not taxable, had become the exclusive property of Shri Harshad D.Vaidya in his individual capacity. Any further transfer, therefore, has to be from Shri harshad D.Vaidya individual. Since section 56(2) is not recognizing any relative as far as an HUF is concerned, further transfer of the sum from the individual*

to his HUF is likely to hit by section 56(2). Like any other gift between two separate entities, the gift of a coparcener to his Karta has to have the same character, in as much as the coparcener looses his right over the property and some other individuals including the coparcener get the right over that but individual share is undefined. The amount goes to the common hotchpotch or the corpus. Therefore, the argument of the assessment wing that even if the revised statement and grounds are admitted, the appellant would still be hit by section 56(2) appears to be a sound proposition.

11. Therefore, keeping all the earlier referred proceedings in view as well as the factual and legal position, I hold that in the facts and circumstances, the gift in question is covered u/s.56(2) and therefore the same is liable to be added to the total income declared."

4. From the side of the assessee, ld.AR Mr.M.K.Patel appeared and placed reliance on the compilation containing pay-in-slips of Bank, photocopy of the cheques issued by the donor, Affidavit of the donor, statement recorded of the donor, etc. He has also argued that in one of the decision pronounced in the case of Vineetkumar Raghavjibhai Bhalodia vs. ITO, ITAT Rajkot Bench in ITA No.583/Rjt/2007 for A.Y. 2005-06 reported in (2011) 140 TTJ (Rajkot) 58, dated 17/05/2011, for the legal proposition that the gift received by the assessee as a member of HUF, is a gift received from relatives; hence held not taxable u/s.56(2)(vi) of the Act. He has also placed reliance on one of the observation of the Tribunal, i.e., quote "*Therefore, the "relative" explained in Explanation to s.56(2)(vi) includes "relatives" and as the assessee received gift from his "HUF", which is "a group of relatives", the gift received by the assessee from the HUF should be interpreted to*

mean that the gift was received from the "relatives" therefore the same is not taxable under s.56(2)(vi) includes "relatives" and as the assessee received gift from his "HUF", which is "a group of relatives", the gift received by the assessee from the HUF should be interpreted to mean that the gift was received from the "relatives" therefore the same is not taxable under s.56(2)(vi)." Unquote.

5. From the side or the Revenue, ld.Sr.DR Mr.D.K.Singh has supported the view taken by the authorities below.

6. Having heard both the sides at some length and perused the record available before us. We confine ourselves to the basic fact that the assessee HUF has received a gift of Rs.7 lacs from one Shri Ishwarlal Ambalal Vaidhya. The objection of the AO was that as per the *Explanation* annexed to section 56(2)(v) the definition of relative do not include relationship viz-a-viz HUF, therefore the amount received from the donor by the HUF do not fall within the relationships as prescribed in the said *Explanation*.

6.1. At this juncture, it is worth to mention that Shri Ishwarlal Ambalal Vaidhya, the donor has gifted the said amount to the HUF of his nephew, namely, Harshadbhai Dahyalal Vaidhya ((the appellant). This fact was clarified by the donor when his statement was recorded on oath during the proceedings. In his statement, he has stated that Shri Harshadbhai Dahyalal Vaidhya is son of his elder brother and an amount of Rs.7 lacs was given on 1/10/2004 to Harsahdbhai Dahyalal Vaidhya(Individual).

He has also stated that the contents of the gift were duly recorded in the title gift-deed. Copy of the said gift-deed was made available to the Revenue Department. Later on, it was informed that the said gift-deed was revised on 25/10/2004. There was an another mention of a revised gift deed dated 28/03/2007. However, we consider it proper not to get confused by several statements recorded and supporting deeds were placed before the Revenue Authorities by the assessee on one hand and the donor on the other hand. We confine ourselves to the basic fact that the donor Shri Ishwarbhai Ambalal Vaidhya, a retired principal of Smt.M.A.Parikh Vidhyalaya has gifted a sum of Rs.7 lacs to his nephew, stated to be a M.D.(Gynecologist) doctor in Alka Hospital and accepted the gift as Karta of HUF. The undisputed fact is that Shri Harshadbhai D.Vaidhya has accepted the gift as a Karta of his HUF. The fundamental question on those facts, from the side of the Revenue Department is that the *Explanation* annexed to section 56(2)(v) is that the term "relative" as defined in *Explanation* is limited to the individuals or it can be extended in the cases of HUF receiving gift from a donor who otherwise fall within the list of the relatives as prescribed in *Explanation*.

7. A sub-section has been inserted by the Finance ((No.2) Act, 2004 w.e.f. 1.4.2005 and the relevant section reads as follows:-

Section 56

"(1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the following income shall be chargeable to income-tax under the head "Income from other sources", namely :—

.....

[(v) where any sum of money exceeding twenty-five thousand rupees is received without consideration by an individual or a Hindu undivided family from any person on or after the 1st day of September, 2004, [but before the 1st day of April, 2006,] the whole of such sum:

Provided that this clause shall not apply to any sum of money received—

(a) from any relative; or

(b) on the occasion of the marriage of the individual; or

(c) under a will or by way of inheritance; or

(d) in contemplation of death of the payer.

[(e) from any local authority as defined in the Explanation to clause (20) of section 10; or

(f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or

(g) from any trust or institution registered under section 12AA.]

Explanation : For the purposes of this clause, "relative" means—

(i) spouse of the individual;

(ii) brother or sister of the individual;

(iii) brother or sister of the spouse of the individual;

(iv) brother or sister of either of the parents of the individual;

(v) any lineal ascendant or descendant of the individual;

(vi) any lineal ascendant or descendant of the spouse of the individual;

(vii) spouse of the persons referred to in clauses (ii) to (vi).]"

7.1 For the year under consideration, i.e. AY 2005-06 the definition of "relative" was in respect of the relationship by an individual donee with close-relatives as defined therein. However, it is very pertinent to note that the operative section i.e. section 56(2)(v) was in respect of (i) individual, and (ii) Hindu Undivided Family (HUF). Meaning thereby the legislature has clear intention to include both the statuses i.e. Individual as well as HUF within its scope; as well as; within its operation. Thus, the Section is applicable in respect of money exceeding Rs.25,000/- received without consideration either by an "individual" or by a "HUF". Now we read the proviso annexed to sub-section (v) that the charging clause shall not apply to any sum of money **received from any relative**. Meaning thereby the proviso is applicable to both of them i.e. "individual" as well as "HUF". The donor–relative can be either relative of "Individual" or "HUF"; as the case may be. In other words, if an amount exceeding Rs.25,000/- is received as a gift either by "individual" or by "HUF", then such an amount is chargeable to income under the head "Income from other sources" but an exception is provided in the **first proviso** that the said clause of charging the amount to tax should not apply to an amount received from any relative. We hereby thus interpret that the proviso prescribes that the charging of the gifted amount shall not apply to any sum of money received as a gift from a "**relative"** either by an "individual" or by "HUF". Naturally, the proviso annexed to clause(v) of section 56(2) do not restrict to an "individual" but it governs "individual" as well as a "HUF". With this understanding/interpretation of the main provisions, we have to examine the definition of "relative" given in *Explanation* annexed to this section. The position shall be

absolutely clear that even in case of HUF if a sum of money is received from any relative and that relative is as defined in *Explanation*, then also fall within the exception as prescribed in this section.

7.2. On our study, we have pondered upon the commentary of Sampath Iyengar "Law of Income Tax" 10th Edition – page 4611 and the comments are reproduced below:-

"Explanation to clause (v)

The Explanation to clause (v), which defines a relative, is wide enough to include spouse, brother or sister, their spouses, brother or sister of either parents of the individual and lineal ascendant or descendant of both the individual and his/her spouse and the spouse of any of the persons mentioned herein before. Hence, the definition covers only relatives of the individuals, so that the explanation seems to have overlooked the provision in the main section sparing liability for Hindu Undivided Family (HUF) in respect of gifts from relatives. Even the other exemption as for occasion on the marriage of individuals or inheritance could have not application to the HUF.

In the case of HUF, since the joint family refers to a group of persons, it either means that the exemption is available for gifts received by the HUF from any person related to the karta or any other family member or it may mean that since HUF cannot have relatives, all the gifts received by the HUF will be taxable. This inference does not obviously fall in line with the intent, because the provision does contemplate exemption of the gifts received by HUF, but has not indicated the relationship that is necessary for the purposes of HUF, because the definition of 'relative' in the Explanation refers to the relatives of the individual and not HUF, with the result that the exemption of gift from relatives is alive only to the extent of possible exemption for gifts by will or in contemplation of death."

7.3. Our above view gets support from an order of Respected Rajkot Bench pronounced in the case of Vineetkumar Raghavjibhai Bhalodia vs. ITO reported at (2011) 140 TTJ (Rajkot) 58. In that cited decision, an individual has received a gift from HUF. The AO was of the view that the HUF being not covered within the definition of "relative", therefore

the gift received by the individual from the HUF was taxable. The Respected Bench has commented that as per the definition of "person" defined in section 2(31) includes "HUF". Therefore a HUF is distinctly assessable to tax as a person under the IT Act. The Bench has observed that, quote "*Therefore, the expression "HUF" must be construed in the sense in which it is understood under the Hindu law as has been in the case of Surjit Lal Chhabda vs. CIT 1976 CTR (SC) 140 : (1975) 101 ITR 776 (SC). Actually an "HUF" constitutes all persons lineally descended from a common ancestor and includes their mothers, wives or widows and unmarried daughters. All these persons fall in the definition of "relative" as provided in Explanation to cl.(vi) of s. 56(2) of the Act. The observation of the CIT(A) that HUF is as good as 'a BOI' and cannot be termed as "relative" is not acceptable. Rather, an HUF is 'a group of relatives'. Now having found that an HUF is 'a group of relatives', the question now arises as to whether would only the gift given by the individual relative from the HUF be exempt from taxation and would, if a gift collectively given by the 'group of relatives' from the HUF not exempt from taxation.*" Unquote.

7.4. The Respected Co-ordinate Bench has also examined the intention of the legislature and thereupon made an observation that, quote "*11.2. Further, from a plain reading of s. 56(2)(vi) along with the Explanation to that section and on understanding the intention of the legislature from the section, we find that a gift received from "relative", irrespective of whether it is from an individual relative or from a group of relatives is exempt from tax under the provisions of s.56(2)(vi) of the Act as a group of relatives also falls within the Explanation to s.56(2)(vi) of the Act. It*

is not expressly defined in the Explanation that the word "relative" represents a single person. And it is not always necessary that singular remains singular. Sometimes a singular can mean more than one, as in the case before us. In the case before us the assessee received gift from his HUF. The word "HUF", though sounds singular unit in its form and assessed as such for income-tax purposes, finally at the end a "HUF" is made up of "a group of relatives". Unquote.

7.5. The above observation has buttressed our view, however, in addition to the above observation of a Coordinate Bench, we have also noted that at some later stage, the legislature became conscious of the problem, therefore while drafting the analogous provisions of section 56(2)(vii), it was added in the definition of "relative" (ii) **in case of a Hindu Undivided Family, any member thereof**. This section is inserted by Finance (No.2) Act of 2009 w.e.f. 1./10/2009 which prescribes that where an individual or HUF receives in any previous year on or after 1st day of October-2009 any sum of money without consideration exceeding Rs.50,000/- the whole of the aggregate value of such sum shall be chargeable to income-tax. **Provided** that the charging clause shall not to apply to any sum of money received from any relative. As per this newly inserted clauses, (a) "relative" means in case of HUF any "member thereof". Although this subsequent change in the Act do not apply for the year under consideration being incorporated by Finance Act, 2009 but it appears that by insertion of these words Hon'ble Legislatures have visualized the difficulty, hence streamlined the provisions by removing the doubt. We therefore hold that since the assessee-HUF has undisputedly received a gift of Rs.7 lacs from a

relative who is an uncle of the Karta of this HUF, i.e.; as per *Explanation* to sub-clause(iv); "brother or sister of either of the parents of the individual", hence fall within the category of the "Relative" prescribed in the Act, therefore not chargeable to tax in the hands of the assessee. Thus the Grounds raised are hereby allowed.

8. In the result, Assessee's appeal is allowed.

Sd/-	Sd/-
(अनिल चतुर्वेदी)	(मुकुल कुमार श्रावत)
लेखा सदस्य	न्यायिक सदस्य
(ANIL CHATURVEDI)	**(MUKUL Kr. SHRAWAT)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 26 / 4 /2013

टी.सी.नायर, व.नि.स./*T.C. NAIR, Sr. PS*

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2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-Gandhinagar
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
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