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TCA No. 757 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 20-04-2026**

CORAM

**THE HON'BLE DR JUSTICE G. JAYACHANDRAN  
AND  
THE HON'BLE MR.JUSTICE SHAMIM AHMED**

Tax Case Appeal No. 757 of 2010

and

M.P.No.1 of 2010

K.Devarajulu (HUF)

..Appellant

Vs

Deputy Commissioner of  
Income Tax, Central Circle-IV,  
Coimbatore.

..Respondent

**PRAYER:** Tax Case (Appeal) is filed under Section 260A of the Income-Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai “B” Bench, dated 27.11.2009 made in ITA No.336/Mds/2009 for the Assessment Year 2000-01.

For Appellant:

Mr.Niranjana Rajagopalan for  
M/s.G.R.Associates

For Respondent:

M/s.V.Mahalingam,  
Senior Standing Counsel  
Mr.P.E.R.Mangala Suvigaran  
Junior Panel Counsel



## **JUDGMENT**

**(Judgment of the Court was delivered by Dr.G.Jayachandran J.)**

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This Appeal is filed by the assessee being aggrieved by the order passed by the Income Tax Appellate Tribunal, Chennai in ITA.No.336/Mds/2009 dated 27.11.2009.

**2. The facts of the case are as follows:**

For the assessment year 2000-01, the assessee filed a return of income on 30.01.2003, declaring acquisition of 1.22 acres of land during the financial year 1991-1992. Out of this, an extent of 70 cents was sold during the previous year 1999-2000. The assessee claimed exemption under Section 54B of the Income Tax Act, in respect of long-term capital gains reinvested under the Capital Gains Accounts Scheme. Subsequently, the Commissioner of Income Tax, exercising power under Section 263 of the Act, issued a notice to the assessee to show cause why the assessment should not be revised in view of a wrongful allowance of exemption under Section 54B to the tune of Rs.14,70,000/-.

**3. According to the Commissioner of Income Tax, Section 54B of the Income Tax provides an exemption only to an individual assessee and does not extend to Hindu Undivided Family (HUF). The assessee, on receipt of notice, has responded stating that the claim for exemption under Section 54B was erroneous and instead it should be considered under Section 54EB. However,**



the Commissioner remanded the matter to the Assessing Officer to redo the assessment after granting the assessee an adequate opportunity to be heard.

Subsequently, the Assessing Officer, the Appellate Authority and the Tribunal consistently held that the exemption claimed by the assessee in the status of an HUF cannot be permitted under Section 54B of the Act.

4. The assessee is before this Court stating that immediately on receipt of notice issued by the Commissioner under Section 263 of the Act, a submission was made stating that the claim should be considered under Section 54EB of the Act. It is the case of the assessee that this submission was consistently ignored throughout the proceedings. Without considering the request for such rectification, the impugned order was passed.

5. This Court, at the time of admission, framed the following substantial questions of law:

- “(i) Is not the word “assessee” used in Section 54B of the Income Tax Act includes HUF?*
- (ii) Is not the Appellate Tribunal bound to consider the plea of the assessee that they claimed exemption only under 54EB and not 54B?”*

6. The learned Standing Counsel appearing for the Department submits that for the Assessment Year 2000-01, the exemption under Section



54B was not available to an assessee with the status of an HUF. It is contended that as the law stood prior to the 2013 amendment, the assessee who claims to be an HUF could not resort to the benefits of Section 54B. To support this contention, the learned counsel placed reliance on the unamended provisions of Section 54B, which read as follows:

***“54B- Capital gain on transfer of land used for agricultural purposes not to be charged in certain cases:-***

*[Subject to provisions of sub-section (2), where the capital gain arises] from the transfer of a capital asset being land which, in the two years immediately preceding the date on which the transfer took place, was being used by the assessee or a parent of his for agricultural purposes [( hereinafter referred to as the original asset), and the assessee has, within a period of two years after that date, purchased any other land for being used for agricultural purposes, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say:-*

*(i) if the amount of the capital gain is greater than the cost of the land so purchased (hereinafter referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under Section 45 as the income of the previous year: and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be nil; or*



*(ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under Section 45; and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase, the cost shall be reduced, by the amount of the capital gain]*

*(2) The amount of the capital gain which is not utilised by the assessee for the purchase of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case”*

He also placed reliance on the judgment of the Division Bench of this Court rendered in ***Commissioner of Income Tax Vs. G.K.Devarajulu*** reported in ***[1991] 56 Taxman 85 (MAD)***.

7. Per contra, the learned counsel appearing for the appellant submitted that the assessee, having cited the wrong provision, sought to rectify the error at the earliest stage, as seen in the reply of the assessee to the notice issued by the Commissioner under Section 263 of the Act.

8. For reasons best known, neither the Commissioner, the Assessing Officer, the Appellate Authority nor the Income Tax Appellate Tribunal



ventured to consider the said request. They failed to test whether the assessee was entitled to any exemption for the long-term capital gains invested as disclosed in the return. It is an admitted fact that out of 1.22 acres of land purchased in the year 1992 by the HUF, 70 cents were sold in the year 1999-2000. A portion of the sale consideration was invested in a bank deposit, all of which was disclosed in the return, though exemption was mistakenly sought under Section 54B. In all fairness, while considering the assessment order, the Commissioner should have considered the assessee's reply and treated the claim as one for exemption under Section 54EB, which reads as follows:

***“54EB: Capital gain on transfer of long-term capital assets not to be charged in certain cases:***

*(1) Where the capital gains arises from the transfer of a long-term capital asset [before the 1<sup>st</sup> day of April, 2000] (the capital asset so transferred being hereafter in this section referred to as the original asset), and the assessee has, at any time within a period of six months after the date of such transfer invested the whole or any part of capital gains, in any of the assets specified by the Board in this behalf by notification in the Official Gazette (such capital gain shall be dealt with in accordance with the following provisions of this section, that is to say:-*

*(a) if the cost of the long-term specified asset is not less than the capital gain arising from the transfer of the original asset, the whole of such capital gain shall not be charged under section 45;*

*(b) if the cost of the long-term specified asset is less than*



*the capital gain arising from the transfer of the original asset, so much of the capital”*

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9. Unfortunately, we find that none of the authorities in this case considered the request to test whether the assessee was really entitled to an exemption under any other provision of law, if not under Section 54B of the Act. The pedantic approach adopted by the authorities throughout these proceedings is deprecable.

10. Authorities empowered to compute tax has to apply the law in all fairness and cannot ignore the plea of an assessee who has sought a rectification of a bona fide error. Hence, we are of the opinion that the orders passed by the authorities below suffers non-application of mind and therefore, set aside.

11. The Assessing Officer is directed to consider the returns filed by the assessee afresh, specifically regarding the claim for exemption on the investment of long-term capital gains. The assessee is permitted to furnish all relevant details insofar as long-term gains acquired from the sale of the 70 cents of land. The Assessing Officer shall apply the law and pass appropriate orders within a period of three (3) months from the date of receipt of a copy of this order.



**12.** With the above directions, this Tax Case Appeal is allowed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

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**(G.J.,J.) (S.S.A.,J.)**  
**20-04-2026**

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To  
Deputy Commissioner of  
Income Tax, Central Circle-IV,  
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**and**  
**SHAMIM AHMED J.**

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