IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH: BANGALORE

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND SHRI SOUNDARARAJAN K, JUDICIAL MEMBER

ITA No.49/Bang/2023
Assessment Year: 2012-13

Sushama Rajesh Rao, No.159, Priyadarshani, R. T. Nagar, MLA Layout, Bangalore – 560 032. **PAN : ACYPR 5251 J**	Vs.	The Deputy Commissioner of Income Tax, Circle – 6(2)(1), Bangalore.
APPELLANT		**RESPONDENT**

Appellant by	:	Shri. V. Chandrashekar, Advocate
Respondent by	:	Shri. Muthu Shankar, CIT(DR)(ITAT), Bangalore.

Date of hearing	:	23.07.2025
Date of Pronouncement	:	18.08.2025

O R D E R

Per Prashant Maharishi, Vice President:

1. ITA No.49/Bangalore/2023 is filed by Smt. Sushama Rajesh Rao (the assessee/appellant) for Assessment Year 2012 – 13 against the Appellate Order passed by National Faceless Appeal Centre (Delhi), the learned CIT(A), dated 07.12.2022 raising following grounds of appeal:

1. The order of the learned Commissioner of Income Tax (Appeals) passed under section 250 r.w.s 254 of the Income Tax Act, 1961 (hereinafter referred to as "Act") dated 07.12.2022 for Assessment Year 2012-13 in so far as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

2. The Appellant denies herself liable to be assessed on a total income of Rs. 8,83,93,817/- as against the returned income of Rs. 39,70,830/- under the facts and circumstances of the case.

3. *The learned Commissioner of Income Tax (Appeals) is not justified in holding that the provisions of section 50C of the Act is mandatory and thereby upholding the addition made by the learned Assessing Officer of a sum of Rs. 55,39,181/- on the facts and circumstances of the case.*
4. *The learned Commissioner of Income Tax (Appeals) failed to appreciate that in view of the third proviso to section 50C of the Act difference between the sale consideration and the stamp duty value to the extent of ten percent is to be ignored and consequently the addition made under section 50C of the Act is contrary to the provisions of the Act on the facts and circumstances of the case.*
5. *The learned Commissioner of Income Tax (Appeals) failed to appreciate that the sale consideration declared by the appellant is the market value of the property which is as per the government guidance value of the property and consequently the addition made under section 50C of the Act is unwarranted on the facts and circumstances of the case.*
6. *Without prejudice, the learned Commissioner of Income Tax (Appeals) failed to appreciate that the in case of dispute in value of the property, the valuation of the property ought to have been referred to a Valuation Officer in accordance with the provisions of section 50(2) of the Act on the facts and circumstances of the case.*
7. *The learned Commissioner of Income Tax (Appeals) is not justified in assessing a sum of Rs. 8,36,25,000/- as the alleged long term capital gains arising on sale of the agricultural land as against the returned short term capital gains of Rs. Nil on the facts and circumstances of the case.*
8. *The learned Commissioner of Income Tax (Appeals) is not justified in holding that the learned Assessing Officer was justified in making addition of a sum of Rs. 8,36,25,000/- on the facts and circumstances of the case.*
9. *The learned Commissioner of Income Tax (Appeals) failed to appreciate that the property sold acquired the nature of a capital asset only on the date of conversion from agricultural land to nonagricultural lands and consequently the cost of acquisition of the converted land is equivalent to the fair market value of the land as on the date of conversion i.e., Rs. 8,36,25,000/- on the facts and circumstances of the case.*
10. *Without prejudice, the authorities below are not justified in holding that the cost of acquisition of the property transferred by the appellant is Nil which is contrary to the provisions of section 49 of the Act on the facts and circumstances of the case.*
11. *The learned Commissioner of Income Tax (Appeals) is not justified in dismissing the appellant's appeal by way of a non-speaking, cryptic order and merely extracting portions of the assessment order and consequently the order of the learned Commissioner of Income Tax (Appeals) is*

without application of mind and in violation of the principles of natural justice on the facts and circumstances of the case.

12. *Without prejudice, the authorities below are not justified in assessing the alleged long term capital gains in the hands of the appellant as per the provisions of the Act and consequently such assessment is without jurisdiction on the facts and circumstances of the case.*
13. *The appellant denies the liability to pay interest under section 234B of the Act, in view of the fact that there is no liability to additional tax as determined by the assessing officer. Without prejudice, the rate, period and on what quantum the interest has been levied are not in accordance with law and are not discernible from the order and hence deserves to be cancelled on the facts and circumstances of the case.*
14. *The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend, or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.*
15. *For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.*

2. Briefly stated, the fact of the case shows that assessee is an individual who filed her return of income on 30.08.2012 declaring total income of Rs.33,71,480/- comprising of income from capital gains, income from house property and income from other sources. This return was revised on 05.08.2013 at total income of Rs.39,70,830/-.

3. Subsequently, the assessment was completed under section 143(3) of the Act (The Act) on 20.03.2025, determining the total income of the assessee at Rs.8,83,93,880/-.

4. Aggrieved by the Assessment Order, the assessee preferred an appeal before learned CIT(A) who dismissed the assessee’s appeal and therefore assessee preferred an appeal before the Tribunal who passed an Order in ITA No.2734/Bang/2017 on 24.01.2018 restoring the matter back to the file of the learned CIT(A).

5. Pursuant to that, the learned CIT(A) passed an impugned Order which is in challenge before us.

6. Only issue is chargeability of capital gain in the hands of the assessee.

7. The fact shows that assessee has received agricultural land, by way of gift as per gift deed dated 04.05.2009 from her husband, situated in Navrathana Agrahara, Jala Hobli under Survey No.10 and 11. Her husband received the said property by way of partition of the family on 26.05.1995. This agricultural land was sold to Smt. G. Lakshmi Aruna. Due to restrictions in purchasing agricultural land under Karnataka Land Reforms Act, the purchaser requested assessee and her husband to convert the said agricultural land to non-agricultural purposes. Accordingly, on 08.06.2011, the above land was converted into non-agricultural land. On 29.06.2011, a sale deed was executed for a total sale consideration of Rs.17,26,87,500/-. The share of the assessee in the above said sale consideration was 48.43% amounting to Rs.8,36,25,000/-. The assessee disclosed the sale consideration in her return of income, claiming cost of acquisition being the fair market value of the agricultural land on date of conversion at Rs.1,50,00,000/- as per Government's guidance value and accordingly computed the taxable capital gain at Rs. Nil.

8. The learned CIT(A), pursuant to the decision of the Co-ordinate Bench, confirmed the addition of Rs.8,36,25,000/- as per paragraph No.6.2 of his appellate Order. The learned AO noted that registration charges for the transaction has been paid for the property value of Rs.18,41,25,000/- whereas the sale consideration is Rs.17,26,87,500/- and therefore there is an under statement in the consideration of Rs.1,14,37,500/- in terms of provisions of section 50C of the Act and therefore considering the share of the assessee at 48.4%, the sum of Rs.55,39,181/- was added to the sale proceeds declared by

the assessee. The cost of acquisition of the share price was also disturbed. The learned CIT(A), in paragraph No.6.2.4 confirmed applicability of provisions of section 50C of the Act and recalculation of cost of acquisition. Thus, the addition of Rs.8,36,25,000/- to the total income of the assessee was confirmed. This issue is under challenge before us.

9. The learned AR has stated that he would first like to consider the grounds that the learned CIT(A) is not justified in assessing the sum of Rs.8,36,25,000/- as alleged long term capital gain arising on sale of the agricultural land as against the short term capital gain of Rs. Nil. He specifically stated that the agricultural land acquired by the assessee is received as a gift from her husband , which is transferred and capital gain is charged in the hands of the assessee which is not correct in view of the provisions of section 64(1)(iv) of the Act. He submitted the fact that assessee is individual and wife of Shri. Rajesh Gundu Rao who gifted the property to the wife which is being sold. Shri. Rajesh Gundu Rao acquired part of the property by way of Memorandum of Partition dated 26.05.1995 and out of that vide gift deed dated 04.05.2009, the property was gifted to his wife Smt. Sushama Rajesh Rao (assessee). He referred to the Order of the learned AO wherein it is also mentioned that the impugned property sold is gift received by the assessee from her husband. He referred to provisions of section 64(1)(iv) of the Act which provides that subject to the provisions of clause (1) of section 27 of the Act, income of an individual should also include income of spouse from assets transferred directly or indirectly to the spouse by such individual otherwise then for adequate consideration or in connection with a agreement to leave apart. He submits that gift of land to the wife is otherwise then for adequate consideration and consequently the provisions of section 64(1)(iv) of the Act are applicable of the facts of the case and the income is not chargeable to tax in the hands of assessee. According to him it is chargeable to tax in the hands of husband of the assessee. For this proposition, he relied

upon the decision of the Hon'ble Supreme Court in the case of Tulsidas Kilachand v. CIT [1961] 42 ITR 1 (SC), ITO Vs. Ch.Atchaiah (1996) 2018 ITR 239 (SC), Sevantilal Maneklal Sheth v CIT (1968) 68 ITR 503 (SC). In view of this, he submits that the assessment of the alleged capital gain arising on the sale of the properties by the appellant in assessee's hands is without jurisdiction in view of the above provisions. He also extensively referred to the above decisions and submitted a written note.

10. The learned DR vehemently submitted that the assessee had admitted the capital gain on the transfer of land making it clear that she was absolute owner of the land and during the scrutiny proceedings also, assessee did not object. The computation of subjected to applicability of section 50C of the Act which is held to be correct. Regarding the applicability of section 64(1) of the Act, it was submitted that it is for the AO to conclude whether invoking the provisions of section is called for after examining the facts of the case and it is not open to the assessee to ask the AO to invoke the provisions of section 64(1)(iv) of the Act. He referred to the decision of the Hon'ble Andhra Pradesh High Court in the case of CIT Vs. Nawab Hashim Jha (1989) 175 ITR 203 for the above proposition. Accordingly, the contention of the learned AR deserves to be rejected. It was further submitted that assessee on her own has filed her independent income tax return and declared the capital gain. Now, speaking about the provisions of section 64(1)(iv) of the Act is a well considered after thought to evade tax liability and further the assessee has not raised these contentions before any of the lower authorities. It was further stated that principle of estoppel applies here which precludes the person from ascertain something contrary to what is implied by a previous action or statement of that person or by a previous pertinent judicial determination. Therefore, now the arguments of the learned AR are self-contradictory. The learned DR further invoked the legal *res ipsa loquitur*.

11. We have considered rival contentions and perused the Orders of the lower authorities. The facts stated hereinabove are not required to be reiterated. The only issue is applicability of provisions of section 64(1)(iv) of the Act. Accordingly, to that section while computing the total income of an individual, it shall also include income that arises to the spouse of such individual from whom assets were transferred directly or indirectly by that individual otherwise for adequate consideration. Thus, if any income arises to the spouse of an individual from a property transferred directly or indirectly, such income may be earned by that spouse but shall be chargeable to tax in the hands of the person who transferred the asset to the spouse. The only restriction is provisions of section 27(i)(1) of the Act.

12. The object of the above provision is designed to overtake and circumvent a tendency on the part of the tax payers, an attempt to avoid tax by transfer of the property to the spouse and show income thereof in the hands of the spouse though it substantially belongs to the transferor. The Hon'ble Supreme Court in the case of Tulsidas Kilachand v. CIT (1961) 42 ITR 1 (SC) (TS-5001-SC-1961-O) describes this issue as the section uses the word "there shall be included", the applicability of this provision is mandatory neither there is an option to the assessee to not to pay the tax nor it is with the Revenue to charge the transferee on such income. Even if the income is assessed in the hands of transferee, there is no bar to clubbing. Thus, taxability in the hands of transferee is immaterial or inconsequential.

13. For application of section 64(1)(iv) of the Act, there has to be an existences of asset, the relationship between the transferor and transferee subsists, transfer may be direct or indirect by the spouse, absence of adequate consideration and direct or indirect income accrual to the transferee happens

then provisions of section are attracted. Only exception is that the transfer is for adequate consideration.

14. In this case, before us, there is a gift from husband to wife and there is no consideration naturally. The gift deed is in writing and registered. It is always a question that when a gift is made by the husband to the wife, there is always a good consideration being love and affection which may be assumed. However, the expression "adequate consideration" is distinguishable from good consideration and both are not same. This issue is decided by the honourable supreme court in following cases: -

> **This extract is taken from *Tulsidas Kilachand v. CIT*, (1961) 42 ITR 1 : 1961 SCC OnLine SC 211**
> **13.** It remains to consider whether there was adequate consideration for the transfer. Reliance has been placed only upon love and affection. The words "adequate consideration" denote consideration other than mere love and affection, which, in the case of a wife, may be presumed. When the law insists that there should be "adequate consideration" and not "good consideration," it excludes mere love and affection. They may be good consideration to support a contract; but adequate consideration to avoid tax is quite a different thing. To insist on the other meaning is really to say that consideration must only be looked for when love and affection cease to exist.

> **This extract is taken from *Major V.P. Singh v. State of U.P.*, 1991 Supp (2) SCC 346 : (1993) 199 ITR 188 : 1991 SCC OnLine SC 28 at page 347**
> **5.** A gift is a transaction without consideration whereas exception under the proviso is in regard to a transaction for adequate consideration. In the absence of a definition of the phrase "adequate consideration," the common parlance meaning of the term has to be accepted. A reference to the decision of Hidayatullah, J. as he then was in *Tulsidas Kilachand* v. *CIT* [AIR 1961 SC 1023 : (1961) 3 SCR 351 : (1961) 42 ITR 1] shows that the words "adequate consideration" were held to denote consideration other than mere love and affection which, in the case of a wife, may be presumed. When the law insists that there should be "adequate consideration" and not good consideration, it excludes mere love and affection. The same view has been taken by this Court in *CWT* v. *Khan Saheb Dost Mohd. Alladin* [(1973) 91 ITR 179 (AP HC)] . Mr Jain wanted us to accept his submission that these cases related to tax

aspects and the meaning ascribed to the term in tax law should not be introduced into the present matters. We do not think this submission should be accepted. The appeals are devoid of merit and are dismissed. No costs.

This extract is taken from *Sonia Bhatia v. State of U.P.*, (1981) 2 SCC 585 : 1981 SCC OnLine SC 163 at page 592

12. Against this background we have now to consider the real intention of the words "transfer for adequate consideration" as used in clause (*b*) of the proviso. The High Court has held that although the deed of gift is a transfer but as it is a transfer without any consideration, therefore such a transfer does not fulfil one of the essential ingredients mentioned in clause (*b*) of the proviso, namely, that it should be for consideration. The High Court has further held that its view is reinforced by the word 'adequate' which qualifies the word "consideration" which completely rules out a transfer in the nature of a gift. The High Court was of the view that a transfer of property by way of a gift being a purely gratuitous transfer made out of love and affection or for the spiritual benefit of the donor, falls completely beyond the ambit of clause (*b*) of the proviso and, therefore, has to be ignored under the provisions of the said sub-section (6) of Section 5 of the Act.

15. In the case before us, apparently there is a gift from husband to the assessee without consideration and the same property is sold which has resulted in capital gain and such capital gain is chargeable to tax only in the hands of the husband.

16. The word "income" includes capital gain which is also held so by Hon'ble Supreme Court in the case of Sevantilal Maneklal Sheth v CIT (TS-5072-SC-1967-O) and also supported by the Circular No.12/2/62 dated 20.11.1963.

17. Therefore, the income of capital gain on sale of the above impugned property is not chargeable to tax in the hands of the assessee but only in the hands of her husband.

18. As we have already held that there is no option either with the assessee or with the Revenue to not to charge above income in the hands of the husband of the assessee but to charge in the hands of the assessee. The Hon'ble Supreme Court in the case of Nagappa C R Vs. CIT (TS-5034-SC-1968-O) and in the case of Muthaiah Chettiar Vs. CIT (TS-5009-SC-1969-O) also supports the above view. With respect to the arguments of the learned DR

stating that same is an afterthought and never raised before the learned lower authorities that income is not chargeable to tax in the hands of the assessee but in the hands of his spouse should prevent the assessee from raising this argument before us for the first time, as we have already held that the option is neither with the assessee nor with the AO to ignore the specific anti avoidance rules provisions contained under section 64(1)(iv) of the Act. Therefore, this argument does not have any substance.

19. Further, the *res ipsa loquitur* raised by the learned DR is not applicable to the provisions of Income Tax Act which is used specifically in negligence cases of the injury. In this case, tax is neither an injury nor a penalty or compensation. It is a due share of the tax of the citizen. Therefore, the above argument does not hold any water.

20. In view of the above facts, we hold that income from transfer of the assets which is received by the assessee as a gift from her husband is chargeable to tax in the hands of the husband of the assessee and not the assessee and therefore ground No.7 of the appeal succeeds.

21. In view of the above decision, all other grounds become academic and infructuous and hence dismissed.

22. In the result, appeal of the assessee is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(SOUNDARARAJAN K)	**(PRASHANT MAHARISHI)**
Judicial Member	**Vice President**

Bangalore,
Dated: 18.08.2025.
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Copy to:

1.	Appellants	2.	Respondent
3.	DRP	4.	CIT
5.	CIT(A)	6.	DR, ITAT, Bangalore.
7.	Guard file		

By order

Assistant Registrar,
ITAT, Bangalore.