**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, KOLKATA**

**SHRI SONJOY SARMA, JUDICIAL MEMBER**
**SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 2682/Kol/2024**
**Assessment Year 2015-16**

**Seema Sureka,**
5A, Rajhans Apartment, 6 Hastings
Park Road, Alipore, Kolkata - 700027
[PAN: ALRPS1237R] ..... **Appellant**

**vs.**

**Deputy Commissioner of Income Tax,**
Central Circle-3(3), Kolkata,
Aayakar Bhaban, Poorva, 110,
Shantipally, Kolkata - 700107 ..... **Respondent**

**Appearances by:**

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| Assessee represented by | : | Miraj D Shah, AR |
| Department represented by | : | Monalisha Pal Mukherjee, JCIT |
| Date of concluding the hearing | : | 30.10.2025 |
| Date of pronouncing the order | : | 04.11.2025 |

**O R D E R**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. This appeal arises from order u/s 250 of the Income Tax Act, 1961 (hereafter "the Act") dated 20.11.2024, passed by the Ld. Commissioner of Income Tax (Appeals), Kolkata – 21 [hereafter "the Ld. CIT(A)"].

1.1 In this case, a search and seizure operation was conducted on the Adhunik Group on 17th and 18th December, 2014. In this matter there were three issues before the Ld. CIT(A) : (i) Misc. receipts of Rs. 96,000/- in cash shown as gifts received, and offered to tax; (ii) Receipt of a gift of Rs. 5,84,000/- from an HUF, claimed as exempt u/s 56(2) of the Act; and (iii) Receipts of Rs. 2,99,133/- shown as profit from commodity trading, albeit on off-market basis.

1.2 At first appellate stage, the assessee was unsuccessful on the basis

of the following findings:

(i) For the amount of Rs. 96,000/- the assessee supplied a list of persons (with affidavits) to show that gifts were received from them. However, the Ld. CIT(A) did not accept this explanation as it was, purportedly, new evidence which was submitted without any application under Rule 46A of the I.T. Rules.

(ii) Regarding the issue of "gift" received from HUF, the Ld. CIT(A)'s findings are extracted:

> *"After a careful consideration of aforesaid decisions relied on by the appellant, I find that those are distinguishable on facts and cannot be applied to the case in hand. I further find that the instant case is squarely covered by a more recent decision of the Hon'ble ITAT, Ahmedabad Bench-D rendered on 21.02.2018 in favour of the Revenue in the case of Gyanchand M. Bardia vs. ITO, Ward 1(2) (2), Ahmedabad reported in [2018] 93 taxmann.com 144 wherein it is held that the legislature substituted clause (e) to Explanation in Section 56(2)(vii) defining the term of "relative" to be applicable in case of an individual assessee as well as HUF; with retrospective effect from 01.10 2009. The assessee is fair enough in not disputing the fact that the former category in clause (i) of Explanation (e) defining a "relative" qua an individual recipient does not include an HUF as a donor. The legislature has incorporated clause (ii) therein to deal with an instance of an HUF donee only receiving gifts from from its members. The legislative intent is very clear that an HUF is not to be taken as a donor in case of an individual recipient. The assessee's plea of having received a valid gift from his HUF is therefore declined and impugned addition is to be upheld." While deciding so, the Hon'ble Bench has considered the findings of the Ld. CIT(A) which reads as under-*
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> > *7.2 The reason for making additions and the submissions made by the appellant alongwith case law cited have been carefully gone through. As per provisions of the Act relevant to the year under consideration, gift from HUF to any member of the HUF is not exempt from taxable income. It is other way that the gift from member to the HUF is exempt from tax. The appellant contended that it is implied when gift from member to HUF is exempt from tax, same way gift from HUF to Member is also tax free. But the appellant forgets the difference that the Karta of the HUF manages the affairs of the HUF as trustee of the HUF and on behalf of other members. When the Hon'ble Parliament brought amendment to the statute declaring gift from member to HUF as tax free, but it was not considered proper to make gift from HUF to member as tax free. Because, if such provisions are made, the Karta of HUF may misuse the provisions and gift the corpus of the HUF to himself, as other members of the HUF have no control over managing affairs of the HUF. Therefore, contention of the appellant is found legally not acceptable, hence it is rejected."*
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> *The judgment in the case of Vineetkumar Raghavjibhai Bhalodia v. ITO [2011] 11 taxmann.com 384/46 SOT 97 (Rajkot) and Surjit Lal Chhabda v. CIT [1975] 101 ITR 776 (SC) relied upon by the appellant in the instant case, has been distinguished by the Hon'ble Bench in the case of Gyanchand M. Bardia (supra). While relying on hon'ble apex court's judgment in CIT v. Sodra Devi [1957] 32 ITR 615, Smt. Tarulata Shyam v. CIT [1977] 108 ITR 345 (SC) and Keshavji Ravji& Co. v. CIT [1990] 49 Taxman 87/183 ITR 1 (SC), the Hon'ble bench has observed that principles of literal interpretation in respect of the relevant context vis-à-vis the*

*legislation intention have to be applied here as there is no ambiguity in definition of a "relative" in respect to an individual donee in the above definition clause. Coupled with this, the legislature itself has accepted an HUF to be a donee in clause (ii) of the "relatives" definition. We apply necessary implication principle to conclude in these facts that the legislative intent is very clear that an HUF is not to be taken as a donor in case of an individual recipient (para 7).*

*The appellant has taken an alternative plea that the amount, so received from the HUF is otherwise, capital receipt not chargeable to tax under section 10(2) of the Act as the appellant is a member of the said HUF. As per section 10(2), amount received out of family income, or in case of impartible estate, amount received out of income of family estate by any member of such HUF is exempt from tax. The question whether a person is or is not a member of a Hindu undivided family is primarily a question of fact, as was held by the Hon'ble Allahabad High Court in the case of Makhan Lal Ram Sarup [1925] AIR. 1925 All. 298 and by the Hon'ble Patna High Court in Commissioner of Income-tax, Bihar and Orissa v. Visheshwar Singh [1935] 3 ITR.216; AIR 1935 Pal. 342. So far as the evidence goes I have merely any evidence except the one-sided claim of the appellant that she is the member of HUF. She has not filed any evidence whatsoever to show the constitution of the HUF, On the contrary, I find in para-4 of the assessment order that the Ld. AO raised a query when appellant simply stated that his husband, being karta of the HUF, had given the gift. At that point of time, the appellant herself had not disclosed the true constituents of the HUF and the source of money where from the gift received. Thus, the exact source of money, so gifted, is still unknown. Two prime conditions of section 10(2) are that gift shall be made by HUF only to its members and that too out of its income. The Appellant has miserably failed to satisfy both the conditions. I have not been referred to any other evidence and I think that it would be difficult to hold upon this oral evidence 'assessee is the member of HUF' in its face value as good enough to take a view that Ld. AO's decision was not justified especially when no such exempt income was reported in the ITR. In view of the foregoing discussions and respectfully following the decision of the Ld. CIT(A) and Hon'ble ITAT in the case of Gyanchand M. Bardia (supra), I am inclined to stay with the decision of the AO and accordingly, the addition is confirmed. This ground is, therefore, dismissed."*

(iii) Regarding the receipts of Rs. 2,99,133/-, added u/s 68 of the Act, representing allegedly off-market transactions, in commodities, the following finding of Ld. CIT(A) is relevant in this regard:

*"I have considered the online submission made by the appellant and relied upon decisions carefully. What is important and relevant is appellant's first reaction when investigation into her claim of commodity derivative profit resulted into a false claim was placed before her by way of a show cause letter issued by the Ld. AO, she didn't come forward with any explanation and now, after almost 8 years, she is canvassing the theory of 'off market' trading. Why she had not complied with the show cause transactions. Even, at this stage, she has not disclosed the identities of the counter parties or counter party brokers, margin of commodity derivative traded, creditworthiness of the payers etc. Not a single piece of credible and reliable evidence whatsoever is placed by the appellant before me to prove genuineness of so called 'off market' transactions and it is a settled principle of law that mere an entry in books or payment through banking channel or having a PAN or filing of ITR as emphasized by the appellant in this case, none is sacrosanct to prove genuineness of transactions in terms of section 68 of the Act. Thus, the*

*theory of 'off market' transactions as advocated by the appellant is simply an afterthought being a cooked up story placed before me. Furnishing of bogus contract notes during assessment is definitely a fraud or an attempt of fraud done knowingly to deprive the revenue and appellant's act and conduct proves for itself. Such fraudulent conduct cannot be substituted by a baseless or evidence less idea of 'off market" transactions.*

*Further, in the submission, the appellant is totally silent about the PAN quoted in the contract notes. The Ld. AO had categorically given the finding that the contract notes did not contain the PAN of the appellant which is ALRPS1237R but contained the PAN - AJVPS2248A which belongs to another Seema Sureka having different father's name and Date of Birth. The appellant's father is Ram Ratan Bubna and the DOB of the appellant is 13.09.1970 whereas that of Smt. Seema Sureka (owner of PAN - AJVPS2248A) is Nathmal Agarwal and 18.03.1964 respectively. Therefore, it is clearly established that the contract notes did not belong to the appellant and the entire transaction was bogus and thus, I find that the Ld. AO has rightly treated the said sum as unexplained cash credit under section 68 of*

2. Aggrieved with these findings of Ld. CIT(A), the assessee has approached the ITAT with the following grounds:

*"1. That the Order passed u/s 250 is bad in law as well as on facts of the case.*

*2. That the Hon'ble Commissioner of Income Tax (Appeals) erred in law and on facts by upholding the addition made by the Learned Assessing Officer without relying on any credible evidence or providing reliable documents to substantiate the addition.*

*3. That the Hon'ble Commissioner of Income Tax (Appeals) erred in law and on facts by confirming the addition made by the Learned Assessing Officer, 3 treating the amount of Rs. 96,000/- as unexplained money under Section 68 of the Income Tax Act, 1961, without properly appreciating the facts and evidence on record.*

*4. That the Hon'ble Commissioner of Income Tax (Appeals) erred in law and on facts by upholding the addition made by the Learned Assessing Officer, treating the gift amount of Rs. 5,84,000/- received from the assessee's husband's HUF as income from other sources under Section 56(2) of the Income Tax Act, 1961, without properly appreciating the facts and legal position of the case.*

*5. That the Hon'ble Commissioner of Income Tax (Appeals) erred in law and on facts by upholding the addition made by the Learned Assessing Officer, - treating the commodity profit amount of Rs. 2,99,133/-as unexplained money under Section 68 of the Income Tax Act, 1961, and taxing the same under Section 115BBE of the Act, without properly appreciating the facts and evidence on record.*

*6. That the appellant craves to leave, add, amend or 5 adduce any of the grounds of appeal during the course of appellate proceedings."*

3. Before us, the Ld. AR argued regarding the addition of Rs. 96,000/- that in any case the assessee had offered to tax the impugned amount as income from other sources and the affidavits were filed to merely strengthen the argument that several small gifts were received from friends

and relatives which were offered to tax in any case. It was submitted that to strengthen the case vis-à-vis the Ld. AO's allegation of the impugned amount being non-genuine, the assessee had filed details of donees which was refused to be entertained on the technical ground that an application under Rule 46A was not filed. It was further submitted that there was denial of opportunity to the assessee in case there was any doubt about the bonafides of such receipts.

3.1 Regarding the issue of "gift" from HUF, the Ld. AR assailed the decision in the case of Gyanchand M. Bardia (reported in 93 taxmann.com 144 (Ahmd), AY 2012-13], as this decision has been relied upon by the Ld. CIT(A) to hold that in Explanation to section 56(2)(vii) of the Act **"relative"** has been clearly defined and HUF is not specifically mentioned thereby as a donor, rather only as a donee. It was argued that in the case of this very same assessee, for AY 2014-15, the same Ahmedabad Bench has differed with the AY 2012-13 decision and held that an HUF, as a conglomeration of relatives, was also covered under the definition of "relative", even though not specifically stated as such in the language of the section itself. The Ld. AR also relied on the Co-ordinate Bench decision in a connected case of Aakash Sureka [IT(SS) 27, 28 &29/Kol/2024, order dated 16.04.2025, on this identical issue. The Ld. AR pointed out the relevant portion from this order as under:

> *"9. The next point with regard to the addition of Rs. 13,02,000/- made u/s 56(2) of the Act is concerned we find that during the year under consideration the assessee received gift of the above amount from M/s Anand Akash Sureka, being the father and a member of Hindu undivided family. The AO disallowed by upholding that the father did not come under the definition of relatives. The submission of the assessee is that 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 we have gone through the cited decision filed by the assessee passed in ITAT, Ahmedabad Bench in Gyanchand M. Bardia vs. ITO (supra) and the relevant portion of this order is herein below:*
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> > *"11.1 Further, we find that the decision of the ITAT Chandigarh Bench in the case of Pankil Garg (supra) has dealt with the issue in a totally different perspective, from the standpoint of the different aspects of Hindu Undivided Family and has held that as per the Hindu Law every member of HUF has a pre-existing right in the property of the HUF and any amount given to a member therefore from the HUF property tantamounts to only giving him what actually belonged to him and there is no question therefore of the same being any amount given for no consideration or in the nature of gift. which are covered in the scope of Section*

*56(2)(vii) of the Act. The relevant findings of the ITAT in the said case are as under.*

*"8. Now coming to the findings of the Ld. PCIT that as per the provisions of section 56 (2)(vii) of the Act, though the members of the 'HUF are to be taken relatives of the 'HUF for the purpose of the said section, however, the converse is not true that is to say that 'HUF is not a relative of the individual Shri Gyanchand M. Bardia vs. ITO member as per meaning of relative given in the case if individual under explanation to section 56(2)(vii) of the Act.*

*Before further deliberating on this question, we deem it necessary to first discuss as to what constitute 'HUF (Hindu Undivided Family). The 'HUF has been included within the meaning of word 'person' in section 2(31) of the Income Tax Act, 1961 as a separate taxable entity but 'HUF has not been defined in the Income Tax Act, whereby, it means that the expression 'HUF in the Act is used in the sense in which a 'Hindu Joint Family' or a 'Hindu Undivided Family ('HUF') is understood in the personal laws of Hindus. A Hindu joint or undivided family is not created for any business purposes, rather, it is a normal condition of Hindu society and prevalent throughout India based on the social necessity. Subject to the subsequent amendments in Hindu Succession Act, as per the Hindu Law and Usage, a 'Hindu Joint Family consists of male members descended lineally from a common male ancestor, together with their mothers, wives or widows and unmarried daughters bound together by the fundamental principle of 'sapindaship' or family relationship which is the essence and distinguishing feature of the institution. It is purely a creation of law and cannot be created by an act of parties except in the case of adoption or a marriage, only when a stranger can become a 'HUF" member. An undivided family is a normal condition of a Hindu society which is ordinarily joint not only in estate but also in food and worship. The cord that knits of the family together is not property but relationship. There is no presumption that a family is joint because it is possessed of joint property. If the persons in the family live together and are joint in food and worship, irrespective of the fact that there is joint property of the family, it constitutes 'HUF". It is a fluctuating body, its size increases with birth of a member in the family and decreases on death of a member in the family. Females go and come into the 'HUF on marriage. A 'coparcenary is a narrower body than a joint family and consists of only persons who take by birth an interest in the joint family property and can enforce a partition whenever they like. Though, members of 'HUF" are entitled to be maintained out of the joint family funds, however, the members of the narrower body within 'HUF called 'Coparcenary have birth rights in the joint family property. Hindu Law does not recognize an 'HUF as an entity separate from the members of the family. In an 'HUF', the members collectively own it. The interest and share of the members in the estate of the family is undivided and undetermined. All the members collectively own and enjoy the property without determination of their shares until the same is partitioned. There is community of interest and unity of possession between all the members and upon the death of any of them, the others take by survivorship and not by succession. An 'HUF" though treated as a separate entity for taxation purposes, it differs in several respects from a corporation' and from a 'partnership firm' as the later entities can be formed by an act of parties and strangers can be their members, however, 'HUF" is a creation of law and the members having natural relationship and a stranger cannot become its member except by adoption or marriage. Apart from that, in a partnership firm, each of the members of the partnership firm has a definite and determined share in capital as well as in the profits of the firm. A member of the firm subject to the terms of the agreement/partnership deed may deposit or withdraw his capital but that is not so in the case of a 'HUF. Neither there is any definite share of any of the members in the estate of the 'HUF" nor any member is entitled to any share in the profits if the 'HUF' is engaged in any business. The income of the 'HUF' goes to the common kitty. The property and the income of the 'HUF' is managed by 'Karta' or Manager of the 'HUF who generally is a senior most male member of the family. The powers of the 'Karta' of management to the properties of the 'HUF' are wide and he is not liable to give day to day accounts of the properties to the members of the 'HUF. Since the property of the 'HUF" does not belong solely to an individual member and the shares of the members are not determined, hence, the 'HUF is made a taxable entity in itself. As per the provisions of section 10(2) of the I. T. Act, any sum received by an individual, as a member of 'HUF', which has been paid out of the income of the family or out of the income of the estate of the family is not exigible to taxation. The said exemption has been given on the pattern of a partnership firm to avoid double taxation of the same amount. In the case of partnership firm, when the partnership firm has been assessed to income tax separately, then, the share of profit received by an individual person is not taxable. If a member does not opt to receive his share out of the profits of the firm and opts that the same be added towards his capital in the firm, even then, when the said partner either on dissolution of the firm or otherwise receives back his capital, the said capital is not taxable as an income of the partner, rather, the same is taken as a capital receipt. However, in the case of 'HUF', or to say in the strict sense in case of 'coparcenary', the individual members receive their share on partition. However, during the subsisting coparcenary or to say broadly 'HUF', no member is entitled to receive any definite*

*share out of the income of the 'HUF. It is left to the prudence and wisdom of the manager who has to manage the affairs of the 'HUF', he may spend the money or property of the 'HUF' in the case of a need of a member, such as on the marriage of a unmarried female member or in case of certain treatment of any disease of the member or in case of educational needs of any children in the 'HUF. The amount spent may be more than that the member may have gotten on the partition of the 'HUF'. The Karta of the 'HUF, even can gift of the 'HUF property for pious purpose and even he can contract a debt for the legal necessity and for family purposes and can bind the other members to the extent of their interest in the family property.*

*In the above scenario, the property of the 'HUF' neither cannot be said to belong to a third person nor can be said to be in 'corporate entity', rather, the same is the property of the members of the family. It is because that the share of each of the individual member in the property or income of the 'HUF is not determinate, hence, the family, as such, is treated as separate entity for taxation purposes. 'HUF otherwise is not recognized as a separate juristic person distinct from the members who constitute it. A member of the HUF has a pre-existing right in the family properties. A Coparcener has a pre- existing right and interest in the property and can demand partition also, however, the other members of the 'HUF have right to be maintain out of the 'HUF' property. On division, the share in the estate / capital of the 'HUF cannot be treated as income of the recipient, rather, the same will be a capital receipt in his hands. However, in the case of a partnership firm, if a member receives an amount which is more than his share in the capital or in the profits of the firm, the amount received in excess of the share can be treated as a gift by the firm or by other partners to that individual which will be exigible to income tax. However, in the case of an 'HUF', since there is not any determined share of any member in the family property, any amount received by a member of a 'HUF' from property of 'HUF cannot be said to be more than his share in the property, rather, the same is given to him in the normal course of management of family affairs as is deemed fit or prudent by manager/karta' of the 'HUF and it cannot be said that such an amount received by a member of 'HUF is the income of the said member. It is received out of the common kitty in which such a member has also a joint interest along with other family members. All the ancestral property belong to the family managed by the head of the family and once income of the family is assessed or subjected to tax as per the provisions of the Income Tax Act, then, the distribution / payment out of the joint family property to any member of the family cannot be said to be income of such a member. The justification of the payment or the quantum of amount paid to any member by the 'Karta'/manager of the 'HUF is though subject to challenge by other members of the HUF, if found to be not genuine or not for family good, however, a third person cannot question it. Family income flows into a common pool from which resources are drawn to meet needs of all the members which are regulated by the head of the family. In such circumstances, any amount received by a member of the 'HUF, even out of the capital or estate of the 'HUF' cannot be said to be income of the member exigible to taxation. Since such a member himself has a preexisting right in the property of the 'HUF, hence, it cannot be said to be a gift without consideration by the 'HUF or by the other members of the 'HUF to that recipient member. In such circumstances, the provisions of section 56(2)(vii) are not attracted in case an individual member receives any sum either during the subsistence of the 'HUF for his needs or on partition of the 'HUF in lieu of his share in the joint family property.*

*However, the converse is not true i e to say in case an individual member throws his self-acquired property into common pool of 'HUF. The "HUF or other members of the 'HUF do not have any pre-existing right in the self acquired property of a member. If such an individual member throws his own/self-earned or self-acquired property in common pool, it will be an income of the 'HUF, however, the same will be exempt from taxation as the Shri Gyanchand M. Bardia vs. ITO individual members of an 'HUF have been included in the meaning of 'relative' as provided in the explanation to section 56(2)(vii) of the Act. It is because of this salient feature of the HUF that in case of individual, the HUF has not been included in the definition of relative in explanation to section 56(2) (vii) as it was not so required whereas in case of HUF, members of the HUF find mention in the definition of 'relative' for the purpose of the said section. In view of the abave discussion, the amount received by the assessee from the 'HUF, being its member, is a capital receipt in his hands and is not exigible to income tax"*

*We have also gone through the order passed by the Co-ordinate Bench of Rajkot in the case of Vineet Kumar Raghavji Bhai Bhalodia vs. ITO reported in [2011] 140 TTJ 58 (Rajkot) wherein it has been held as under:*

*"The expression Hindu Undivided Family 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 101 ITR 776 (SC). Actually a Hindu Undivided family 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 clause (vi) of Section 56(2) of the Act. The observation of the Ld. CIT(A) that HUF is as good as a body of individuals and cannot be termed as relative is not acceptable*
>
> *10. Going over the facts of the case as well as cited decision of the assessee we find force in the argument of the Ld. Counsel of the assessee that the assessee is entitled to claim deduction u/s 56(2) of the Act even the gift received from the father. Accordingly, the order passed by the AO confirmed by the Ld. CIT(A) is set aside and addition made under the same section is hereby directed to be deleted.*

The Ld. AR also averred that even u/s 10(2) of the Act, the impugned amount would be exempt from tax. It was mentioned that the Ld. CIT(A) had brushed aside this alternative plea by simply saying that such exemption could not be permitted on the basis of a bald claim that the assessee was a member of the donee HUF.

3.2 Regarding the addition of Rs. 2,99,133/- u/s 68 of the Act, the Ld. AR relied on the finding given in the connected case of Aakash Sureka, Shivam Sureka (supra). It was the submission that off-market trade in commodities was not prohibited and the assessee had provided adequate documentation to demonstrate the genuineness of her claim. The Ld. AR also assailed the finding of Ld. CIT(A) that such an explanation was, allegedly, an afterthought after a gap of 8 years (supra).

4. Per contra, the Ld. DR pointed out that the language of section 56(2)(vii) of the Act was clear and unambiguous in as much as while on individual or HUF are mentioned for receiving funds but exemption from taxation is very specifically provided only to entities and occasions mentioned in the proviso to this part of section 56(2) of the Act. It was pointed out that the Explanation did not mention HUF as a donor, even after amendment brought in by the Finance Act, 2012, with retrospective effect from 01.10.2009. It was also pointed out that the assessee was stressing on the presumption that the said HUF would necessarily have the assessee as a member (co-parcener), without demonstrating the same through any significant documentation.

4.1 Regarding the amount of Rs. 96,000/- it was stated that the assessee

wanted the Ld. CIT(A) to adjudicate on the issue on the basis of new evidence, without any formal application under Rule 46A. The Ld. AR supported the action of Ld. CIT(A) in this regard.

4.2 Regarding the impugned amount of Rs. 2,99,133/- it was argued by the Ld. DR that adequate evidence was not provided to justify the impugned transaction.

5. We have carefully considered the rival submissions and have gone through the documents before us, including the cases relied upon by the Ld. AR. Regarding the so-called gifts amounting to Rs. 96,000/- it is seen that the assessee has herself offered the same to tax as income from other sources. Even if no evidence was to be considered regarding the source of funds in this case, it appears that treating the said amount u/s 68 of the Act does not overtly result in any significant revenue gain since the rate of tax prevailing for this assessment year was 30% u/s 115BBE of the Act. This rate was enhanced to 60% from AY 2017-18 only. While the issue of taxation would at best be a secondary consideration in deciding the merit of the case, it does have a certain persuasive value considering that the impugned amount has already been offered to tax. It is felt that no useful purpose would be served in remanding this matter back to the Ld.AO for verifying the unadmitted evidence. Suffice it to say, the assessee succeeds on this issue, as the said amount is already offered to tax.

5.1 Regarding the gift from HUF, in which the husband of the assessee is the Karta, it is seen that though there is a Coordinate Bench decision in a connected case (supra), which itself relied on Gyanchand M. Bardia's case of AY 2014-15 (supra) which took, an opposing stance to an earlier year's case (AY 2012-13) in which it was held that an HUF cannot be treated as a "relative" within the meaning of Explanation to section 56(2)(vii) of the Act. Considering the conflicting decisions of ITAT, we have carefully examined the judicial literature available on the subject, only to realise that no

judgement of any Hon'ble High Court or even the Hon'ble Supreme Court is available on the issue. Thus, we are left with no option but to go back to the extant legislation and apply the rules of interpretation of statutes to enable a judicious understanding of the issue. To begin with the provision relevant for this case deserves to be extracted:

> ***Income from other sources.***
> ***56.*** *(1) --------*
> *(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), the following incomes, 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; or*
> *[4][(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 person referred to in clauses (ii) to (vi);]*
>
> ***(vi)*** *where any sum of money, the aggregate value of which exceeds fifty thousand rupees, is received without consideration, by an individual or a Hindu undivided family, in any previous year from any person or persons on or after the 1st day of April, 2006 [but before the 1st day of October, 2009], the whole of the aggregate value 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[6a]; or*
> *(c) under a will or by way of inheritance; or*
> *(d) in contemplation of death of the payer; or*
> *(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—*
> *(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 person referred to in clauses (ii) to (vi);]*
>
> ***(vii****) where an individual or a Hindu undivided family receives, in any previous year, from any person or persons on or after the 1st day of October, 2009,—*
> *(a) any sum of money, without consideration, the aggregate value of which exceeds fifty thousand rupees, the whole of the aggregate value of such sum;*
> *(b) any immovable property,—*
> *(i) without consideration, the stamp duty value of which exceeds fifty thousand rupees, the stamp duty value of such property;*

*(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding fifty thousand rupees, the stamp duty value of such property as exceeds such consideration:*
***Provided** that where the date of the agreement fixing the amount of consideration for the transfer of immovable property and the date of registration are not the same, the stamp duty value on the date of the agreement may be taken for the purposes of this sub-clause:*
***Provided further** that the said proviso shall apply only in a case where the amount of consideration referred to therein, or a part thereof, has been paid by any mode other than cash on or before the date of the agreement for the transfer of such immovable property;]*
*(c) any property, other than immovable property,—*
*(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;*
*(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:*
***Provided** that where the stamp duty value of immovable property as referred to in sub-clause (b) is disputed by the assessee on grounds mentioned in sub-section (2) of section 50C, the Assessing Officer may refer the valuation of such property to a Valuation Officer, and the provisions of section 50C and sub-section (15) of section 155 shall, as far as may be, apply in relation to the stamp duty value of such property for the purpose of sub-clause (b) as they apply for valuation of capital asset under those sections :*
***Provided further** that this clause shall not apply to any sum of money or any property 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 or donor, as the case may be; or*
*(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,—*
*(a) "assessable" shall have the meaning assigned to it in the Explanation 2 to sub-section (2) of section 50C;*
*(b) "fair market value" of a property, other than an immovable property, means the value determined in accordance with the method as may be prescribed[9];*
*(c) "jewellery" shall have the meaning assigned to it in the Explanation to sub-clause (ii) of clause (14) of section 2;*
*(d) "property" [means the following capital asset of the assessee, namely:—]*
*(i) immovable property being land or building or both;*
*(ii) shares and securities;*
*(iii) jewellery;*
*(iv) archaeological collections;*
*(v) drawings;*
*(vi) paintings;*
*(vii) sculptures;*
*(viii) any work of art; [or]*
*(ix) bullion;]*
*(e) "relative" means,—*
*(i) in case of an individual—*
*(A) spouse of the individual;*
*(B) brother or sister of the individual;*
*(C) brother or sister of the spouse of the individual;*
*(D) brother or sister of either of the parents of the individual;*
*(E) any lineal ascendant or descendant of the individual;*
*(F) any lineal ascendant or descendant of the spouse of the individual;*
*(G) spouse of the person referred to in items (B) to (F); and*
***(ii) in case of a Hindu undivided family, any member thereof;]** [emphasis added]*
*(f) "stamp duty value" means the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property;]*
*(viia) where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year, from any person or persons, on or after the 1st day of June, 2010, any property, being shares of a company not being a company in which the public are substantially interested,—*
*(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;*
*(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration:*

> ***Provided*** *that this clause shall not apply to any such property received by way of a transaction not regarded as transfer under clause (via) or clause (vic) or clause (vicb) or clause (vid) or clause (vii) of section 47.*
> *Explanation.—For the purposes of this clause, "fair market value" of a property, being shares of a company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the Explanation to clause (vii);]*
> *(viib) where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares:*
> ***Provided*** *that this clause shall not apply where the consideration for issue of shares is received—*
> *(i) by a venture capital undertaking from a venture capital company or a venture capital fund; or*
> *(ii) by a company from a class or classes of persons as may be notified by the Central Government in this behalf.*
> *Explanation.—For the purposes of this clause,—*
> *(a) the fair market value of the shares shall be the value—*
> *(i) as may be determined in accordance with such method as may be prescribed; or*
> *(ii) as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value, on the date of issue of shares, of its assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature,*
> *whichever is higher;*
> *(b) "venture capital company", "venture capital fund" and "venture capital undertaking" shall have the meanings respectively assigned to them in clause (a), clause (b) and clause (c) of [Explanation] to clause (23FB) of section 10;]*
> *(viii) income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A.]"*

At this stage, we may also reflect on the legal status of an HUF and the role of Karta of HUF. The position of Karta of an HUF is like that of a manager. It is *sui generis*. The relation between him and the other members of the family is not that of principal and agent, or of partners. It is more like that of a trustee and *cestui que* trust. But his fiduciary relationship does not involve all the duties normally imposed upon trustees. The manager or Karta has no unrestricted right to alienate or gift away the HUF's money or property. This can be done only for certain purposes. However, the members of HUF can give gifts to other members out of their self-acquired earnings or properties. The foregoing discussion regarding HUFs shows that individuals and HUFs are quite distinct, while the latter is having only legal recognition, and, hence, incapable of having relatives as specified in the Explanation (supra). The concept of a 'relative' as noticed from the Explanation has application to individuals only as mentioned in the Explanation and cannot be applied in cases of HUFs, as has been done by the Coordinate Bench of Kolkata Tribunal. Thus the word '**relative**' as

applicable to '**individuals**' cannot, mutatis-mutandis, apply to HUFs also.

At this juncture, the critical findings from the Gyanchand M. Bardia case (AY 2012-13) [93 taxmann.com 144 (Ahmd)] also deserve to be extracted:-

> *"7. We have given our thoughtful consideration to rival submissions. Case file perused. The first dispute between the parties is qua validity of assessee's gift claim as received from the HUF amounting to Rs. 1,02,00,000/- coming through banking channel. Both the lower authorities are of the view that an HUF does not come under the specified category of a relative in Section 56(2)(vii) as applicable w.e.f. 01.10.2009. The assessee's main reliance is on this tribunal's Rajkot bench decision in Vineetkumar Raghavjibhai Bhalodia (supra) accepting a similar gift claim of individual assessee from HUF. The Revenue has preferred Tax Appeal No. 1326/2011 against the same before the hon'ble jurisdictional high court. The same stood admitted on 23.10.2012 for final adjudication. The fact however remains that much water has flown down the stream since the above co-ordinate bench decision. The assessment year therein is 2005-06. Relevant statutory provision at that point of time was Section 56(2)(v) of the Act. This followed clause (vi) in Section 56(2) increasing the amount of Rs. 50,000/- from earlier limit of Rs. 25,000/- as applicable upto 01.10.2009. Then came clause (vii) w.e.f. 01.10.2009 specifying the same to be applicable both in case of an individual as well as HUF recipients. The legislature substituted clause (e) to Explanation in Section 56(2)(vii) defining the term of "relative" to be applicable in case of an individual assessee as well as HUF; with retrospective effect from 01.10.2009. The assessee is fair enough in not disputing the fact that the former category in clause (i) of (e) defining a "relative" qua an individual recipient does not include an HUF as a donor. The legislature has an instance of an HUF donee only receiving gifts from its members. We refer to Board's circular no. 1/2011 r.w. explanatory circular for Finance Act, 2009, makes it clear in latter's clause no.24.2 that Section 56(ii) is an anti-abuse provision. We also quote hon'ble apex court's judgment in CIT v. Sodra Devi [1957] 32 ITR 615, Smt. Tarulata Shyam v. CIT [1977] 108 ITR 345 (SC) and Keshavji Ravji & Co. v. CIT [1990] 49 Taxman 87/183 ITR 1 (SC) to observe that principles of literal interpretation in respect of the relevant context vis-à-vis the legislation intention have to be applied here as there is no ambiguity in definition of a "relative" in respect to an individual donee in the above definition clause. Coupled with this, the legislature itself has accepted an HUF to be a donee in clause (ii) of the "relatives" definition. We apply necessary implication principle to conclude in these facts that the legislative intent is very clear that an HUF is not to be taken as a donor in case of an individual recipient. Learned counsel's reliance on Surjit Lal Chhabda (supra) is therefore not acceptable in this peculiar legislative backdrop of facts and circumstances. Learned co-ordinate bench (supra) seem to have followed "Bholadia" case law which is no more applicable in view of subsequent legislative developments vide Finance Act, 2012 w.e.f. 01.10.2009 (supra). We thus do not treat the same as finding precedents as per [1994] 73 Taxman 473/[1993] 202 ITR 222 (AP) (FB) CIT v. B.R. Constructions. The assessee's former plea of having received a valid gift from his HUF is therefore declined."*

It is clear that after the amendment brought in by **Finance Act, 2012, establishes the position of an HUF as a donee only**, and certainly not as a donor. The cases relied upon by the Ld. AR and even the findings in the case of Aakash Sureka (supra) tends to stretch the meaning of "HUF" to that of a conglomeration of relatives and thus treats the phrase covered for the purposes of understanding "relative" within the meaning of Explanation to section 56(2)(vii) of the Act. Clearly "relative" and "HUF" are sought to be used inter-changeably even in the face of the fact that the HUF as a donee was only later inserted through the Finance Act, 2012. Had it been the intention of legislature to include the HUF as a donor, it would have clearly mentioned as such. At this stage, it is also essential to remind ourselves that the definition of **"person"** as per section 2(31) of the Act, recognizes the "HUF" as a distinct entity from "an individual". Thus, the Gyanchand M. Bardia case of AY 2012-13 (supra) has greater persuasive value for this adjudication than the cases relied upon by the Ld. AR. Accordingly, we support the action of Ld. CIT(A), in principle, on this issue.

However, the alternative argument of the Ld. AR that the impugned amount would be exempt u/s 10(2) of the Act, has some value. It is seen that all along the assessee has been asking for exemption u/s 56(2) of the Act only, which, as has been discussed earlier, is not allowable, but a plain reading of section 10(2) of the Act shows that it could come to the rescue of the assessee in case the facts surrounding the issue are clearly visible, as applicable to section 10(2) of the Act. We find that at no stage has any fact finding been done in regard to examine the applicability of section 10(2) of the Act. Accordingly, we set aside the addition u/s 56(2) of the Act for re-consideration u/s 10(2) of the Act and direct the Ld. AO to give an opportunity to the assessee to present the necessary facts and thereafter to consider the impugned amount for exemption u/s 10(2) of the Act, if legally possible. We direct accordingly.

5.2 Regarding the issue of impugned amount resulting from trading in

commodities, it is seen that it is an off-market trade, which admittedly is not barred by any law. However, in such instances a greater onus is cast on the assessee to prove its bonafides with respect to the following:

(i) Price at which the trade happened;

(ii) Date(s) on which the trades happened;

(iii) Consequential movement to or from the depository of such commodities or through any other means, for an arm's length determination of the trading transaction claimed;

(iv) Payment method and dates of such transactions, clearly linked to such trades.

In light of these observations, we set aside the addition on this account and direct the Ld. AO to verify the impugned transaction in light of pointers given above. The issue of correct PAN on the said transaction would also be examined.

6. In result, appeal of the assessee is partly allowed.

Order pronounced on 04.11.2025

| | |
|---|---|
| Sd/- | Sd/- |
| **(Sonjoy Sarma)** | **(Sanjay Awasthi)** |
| **Judicial Member** | **Accountant Member** |

Dated: 04.11.2025
*AK, Sr. P.S.*

*Copy of the order forwarded to:*
1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches