IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH
(Conducted Through Virtual Court)
Before: Ms. Annapurna Gupta, Accountant Member
And Shri TR Senthil Kumar, Judicial Member

ITA No. 2244/Ahd/2017 **Assessment Year 2014-15**

Shri Gyanchand M. Bardia Bardia Mansion, Kapasi Bazar, Kalupur, Ahmedabad-380002 PAN NO. ACWPB6217G (Appellant)	Vs	The I.T.O., Ward-1(2)(2), Ahmedabad (Respondent)

Appellant by : Shri Rajesh Shah, A.R.
Respondent by : Shri J.L. Bhatia, Sr. D.R.

Date of hearing : 10-02-2022
Date of pronouncement : 25-03-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeal has been filed by the Assessee against the order passed by the Commissioner of Income Tax (Appeals)-10, Ahmedabad, (in short referred to as CIT(A)), dated 22-08-2017, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the "Act") pertaining to Assessment Year (A.Y) 2014-15.

2. The appeal was earlier dismissed vide order dated 25.07.2019 vide an ex-parte order holding the issue to be covered by the order of the ITAT in the case of assessee itself in preceding year. Subsequently, the said ex-parte order was recalled in M.A. No. 364/Ahd/2019 dated 05.03.2021. Hence the instant appeal before us.

3. The solitary issue in the present appeal relates to the taxability of gift received by the assessee from his HUF u/s. 56(2)(vii) of the Act. The impugned gift was treated as taxable by the A.O. and the same confirmed by the CIT(A) noting that identical issue had arisen in the case of the assessee for assessment year 2012-13 wherein the addition was confirmed by the Ld. CIT(A).

4. The assessee aggrieved by the said order has raised the following grounds before us:

> *l. That the C.I.T. (Appeals) erred in confirming the taxing of the gift of Rs. 50,00,000 received by the Appellant from the H.U.F. of the Appellant himself u/s 56 r.w.s.68 of the I. T. Act on the ground that the benefit of the second proviso to section 56(2)(vii)© of the Act is not available in respect of the gift received by an individual from an H.U.F. . It is submitted that H.U.F. is nothing but a group of individuals and such individuals are the "Relatives' specified under clause (e) of the Explanation to section 56(2)(vii) and, therefore, the said gift cannot be taxed as an income of the Appellant in view of various decisions including that of the Honourable Ahmedabad Tribunal and, therefore, the addition of Rs.50,00,000 made by the A.O. be directed to be deleted and that the assessment made by the A.O. be directed to be modified accordingly.*
> *Without prejudice to the'above,*
> *That the C.I.T. (Appeals) further erred in not dealing with the alternative ground relating to not treating the amount of Rs. 50 lacs received from Gyanchand Mulchand Bardia, H.U.F. as an amount received by way of distribution of income of the H.U.F. and, therefore, exempt u/s 10(2) of the Act. It is submitted that in view of the facts of the case, the amount of Rs. 50 lacs received by the Appellant is also exempt u/s 10(2) of the Act and, hence, the addition of Rs. 50 lacs made by the A.O. be deleted.*
>
> *2.That the C.I.T.(Appeals) erred in not following the decisions of various Honourable Tribunals including that of the Honourable Ahmedabad Tribunal though the same are directly on the issue involved and are binding on the C.I.T.(Appeals) without giving any justifiable reasons for taking a different view except saying that the issue is covered by his own decision for the A.Y. 2012-13 and making irrelevant observations in para 4.4 of his order. It is submitted that when even the other Tribunals have followed the decisions of the Honourable Ahmedabad and Rajkot Benches of the Tribunal, the C.I.T.(Appeal) should have also followed the same and deleted the addition. It is, therefore, submitted that the appellant be allowed the cost of this litigation in the interest of justice to the appellant.*

5. During the course of hearing before us submissions in writing were filed making contentions against the impugned addition. Referring to the same, Ld. Counsel for the assessee made oral contentions, the gist of which is that though admittedly in the assessee's own case identical gifts received in earlier year,i.e A.Y 2012-13 and subjected to tax u/s. 56(2)(vii) of the Act has been upheld by the ITAT, but in a plethora of decisions by the Co-ordinate Benches of the ITAT including the Jurisdictional Bench of Ahmedabad, the same has been held not taxable in the hands of the assessee. Special reference was made to the decision of the Chandigarh Bench of the ITAT in the case of Pankil Garg in ITA No. 773/Chd/2018 dated 17.07.2019 in which one of us (Accountant Member) was co-author, pointing out therefrom that it was held in the said case that the basic nature of the amount received by a Member from his HUF was not in the nature of a gift but being apportionment of his own share in the property of the asset of the HUF ,given to him. That therefore it could not be termed to be in the nature of a gift "which were purportedly covered under the purview of Section 56(2)(vii) of the Act". That it was pointed out that the said decision also held that the amount was exempt by virtue of Section 10 of sub-section (2) of the Act also. Ld. Counsel for the assessee's contention is that the reasoning on the basis of which the amount received by the assessee had been held to be taxable by the ITAT in assessment year 2012-13 in its own case, has been dealt with clearly in the decision in the case of Pankil Garg(supra) both with respect to applicability of Section 56(2)(vii) of the Act and Section 10(2) of the Act and has also been dealt with in a plethora of decision by the Co-ordinate Benches of the ITAT right from the first decision in the case of VineetKumar Raghavjibhai Bhalodia vs. ITO reported 140 TTJ Rajkot (58). He therefore contended that the aforesaid decisions in favour of the assessee were applicable and the addition made of the amount so received by the assessee from its HUF be deleted.

7. The submissions made by the Ld. Counsel for the assessee in writing before us, dated 02.12.2021 are as under:

TO
The Honourable Members,
Income tax Appellate Tribunal,
"B" Bench, Ahmeabad

Respected Sirs,

RE: GYANCHAND M. BARDIA
ITA NO. 2244/AHD/2017 - HEARING ON 6-12-2021
PAN: ACWPB6217G - ASST,YEAR 2014-15
REQUEST FOR A REFERENCE TO A FULL/SPECIAL BENCH

With reference to the above appeal, at the outset, we would like to mention that the appellant had received gift of Rs. 50 lacs from his own H.U.F. during the year under appeal. The appellant had claimed the same as exempt u/s 56(2)(vii) of the Act as all the co-parceners/members of the said H.U.F. were "Specified Relatives' as per the definition of "Relative' given in Section 56 for the purpose of this section. In appeal, alternative claim of the sum so received being exempt u/s 10(2) of the Act was also made before the CIT(A) but the same was not dealt with at all.

We have to submit that the paper book has been filed by us on 27-7-2021 along with the copies of various judgements all of which are in favour of the assessee except one in the case of the present appellant for the Asst. yr. 2012-13 where , with due respect, owing to hurried misinterpretation of the amendment carried out by the Finance Act. 2012 in Section 56(2) w.r.e.f. 1-10-2009 defining the term "Relative' for the purpose of Section 56(2) with reference to the gifts received by an H.U.F, some direct decisions of various Tribunals, which are being followed even after such an amendment by different Tribunal, were held to be "not applicable'. Even the Findings and observations of the Honourable Supreme Court in the case of Surjitlal Chhabda reported in 101 ITR 776 (SC) were given a go by without proper discussion.

Moreover, we also regret to state, with due respect, that the alternative ground of claim of exemption u/s 10(2) of the Act was dismissed without any meaningful discussion although direct decision of the Honourable Rajkot Bench in the case of Vineetkumar Raghavjibhai Bhalodia V. ITO reported in [2011] 140 TTJ (RAJKOT) 58 was submitted and relied upon which amounts to gross injustice to the assessee. What was mentioned in the order was as under which is totally unjustified and unfair:

"8. Learned Counsel at this stage refers to assessee's alternative plea that the CIT(A) has not' adjudicated the later ground that the amount in question is exempt u/s 10(2) of the Act. We find no merit in the instant alternative plea as well since a gift sum which is not allowable under the relevant specific clause cannot be accepted to be an exempt income u/s 10(2) of the Act. We thus treat instant later plea to be mainly technical in nature devoid of merit."

It is important to note that the provisions of section 10(2) are the same till today as were interpreted in the above decision and, therefore, the above decision should have been followed, particularly in the absence of any gross mistake being pointed out in this regard. In the case of Shri Pankil Gaig V. PCIT. Karnal bearing ITA XO. T73'CHD/2018 decided on 17-7-2019 by the HonoiraMe Chandigadh Bench , the amount so received by a member/karta from his own H.U.F. has been held to be not exigible to taxation at all for the reason that such a member had a preexisting right in the property of H.U.F. and. therefore, it cannot be said to be a Gift without Consideration by the H.U.F. or by other members. Further, to claim the benefit of section 10(2) of the Act, only two conditions are required to be fulfilled i.e.(i) the Recipient should be a member or co-parcener of H.U.F. and (ii) such sum should have been paid out of income, may-be of earlier years or estate of the H.U.F.. Both these conditions are fulfilled in the present case and due supporting have been filed in the Paper Book, too. Therefore, the mistake of not allowing the benefit of section 10(2) and taxing the sum so received from H.U.F. needs to be rectified in the interest of justice to the assessee while deciding the appeal for the Asst. yr. 2014-15 and it cannot be said that the same has been decided after due application of mind and, hence is to be followed without any discussion in the subsequent year, too.

DECISIONS IN FAVOUR OF THE ASSESSEE :
1. Vineetkumar Raghavjibhai Bhalodia V. ITO - [201 1] 140 TTJ (RAJKOT) 58 On applicability of Section 56(2) as well as 10(2) of the Act
2.Harshadbhai Dahyalal Vaidhya - [2013] 155 TTJ (AHD) 71
3.Hemal D. Shaah V. DCIT - ITA No. 2627/MUM/2015 Decided on 8-3-2017
4. Shri Pankil Garg V. PCIT, Karnal - ITA NO. 773/CHD/2018 Decided on 17-7-2019 (After considering the amendment by the Finance Act, 2012) On applicability of Section 56(2) as well as 10(2) of the Act
5.Mr. Biravelli Bhasker V. ITO - ITA NO. 398/HYD/2015 Decided on 17-6-2015
6. ITO V. Dr. M. Shobha Raghuveera - ITA No. 47/HYD/20 1 3
7. DCIT V. Ateev V. Gala - 20 1 7 Tax Pub (DT) 1 5 1 9(Mum-Trib)

On perusal of the above decisions, it becomes clear that an H.U.F. is a creation of law and Hindu Joint Family consists of father, mother, sons and daughters (presently due to amendment in Hindu Law from October, 2005) . It has been accepted that a gift received by Karta or a member from his own H.U.F. has to be considered as received from 'Specified Relatives' only and, therefore, exempt u/s 56(2) of the Act . The reason given is that H.U.F. is nothing but a collective name given to a "Group of Individuals' all of whom are "Relatives' under Explanation to Proviso to Section 56(2) of the Act. It was also held that Section 56(2) nowhere says that the gift given by an individual Relative from an H.U.F. would be exempt from taxation but the gift given collectively by the 'group of relatives' from H.U.F. would not be exempt. Therefore, gift received from H.U.F. has to

be treated as a gift received from "Relatives' and, therefore, not taxable u/s 56(2) of the Act.

DECISION AGAINST THE ASSESSEE :

1 . Gyanchand Mulchand Bardia V. I.T.O. - ITA No. 1 072/AHD/20 1 6 Decided on 2 1 -2-2018
(Asst.Year-2012-13)

The perusal of the above decision shows that too much importance has been given to the fact that the term 'H.U.F.' has not been included in the definition of a "Relative' when gift is received by an individual member of H.U.F. and, therefore, the amount so received was held to be exigible to tax ignoring the principles laid down in the aforesaid decisions in favour of the assessee. In the case of Pankil Garg cited Supra, it has been clearly held that looking to the fact that H.U.F. is a collective name of group of individuals who all are 'Specified Relatives' , in the case of a gift received by a member from his own H.U.F., there is no need to include H.U.F. in the definition of "Relative' . However, in case of a gift received by an H.U.F.. the donors may not necessarily be specified 'Relatives' within the definition of "Relative' and. therefore, the Legislature made a retrospective amendment w.e.f. 1-4-2009 by the Finance Act, 2012 whereby in case of gift received by H.U.F., only the members of such H.U.F. were defined as "Specified Relatives'. This amendment was not at all applicable to the appellant's case in the Asst. yr. 2012-13 as gift was not received by H.U.F. of the appellant but was received by the Karta of H.U.F. from his own H.U.F. and still under the guise of this amendment, the direct decisions were not followed which is absolutely wrong and unjust and unfair.

Looking to the fact that in all other decisions referred to above, the issue has been decided in favour of the assessee after a detailed discussion, analysis of law and with due reasoning but in the case of the appellant for the A.Y. 2012-13, the amendment in section'56(2) was misinterpreted and applied, too though not applicable .

In view of the above, we would like to submit that gross injustice would be done to the assessee if the decision of earlier year has been followed in the present year. We, therefore, feel that the matter be referred to a Special/Full Bench in the interest of justice after obtaining due approval from the Honourable Vice-President and oblige. We will remain grateful to your Honours for this act of kindness in order to impart justice to the assessees of Ahmedabad at large.

Thanking you.

Yours faithfully,

8. Ld. D.R. on the other hand relied on the order of the lower authorities and stated that the issue was squarely covered by the decision of the ITAT in the assessee's own case for assessment year 2012-13.

9. We have carefully heard both the parties and have also gone through the orders of the authorities below as also all the decisions referred to before us.

9.1 The issue to be adjudicated relates to taxability of the amount received by the assessee from his HUF, in which he is a coparcener, u/s 56(2) (vii) of the Act as sum of money received without consideration.

9.2 As pointed out by the Ld.Counsel for the assessee before us, the ITAT has been consistently holding such sums of money given by HUF to its members/coparceners as not being exigible to tax u/s 56(2)(vii), in a plethora of decisions as under:

1. Vineetkumar Raghavjibhai Bhalodia V. ITO - [201 1] 140 TTJ (RAJKOT) 58 On applicability of Section 56(2) as well as 10(2) of the Act
2.Harshadbhai Dahyalal Vaidhya - [2013] 155 TTJ (AHD) 71
3.Hemal D. Shaah V. DCIT - ITA No. 2627/MUM/2015 Decided on 8-3-2017
4. Shri Pankil Garg V. PCIT, Karnal - ITA NO. 773/CHD/2018 Decided on 17-7-2019 (
5.Mr. Biravelli Bhasker V. ITO - ITA NO. 398/HYD/2015 Decided on 17-6-2015
6. ITO V. Dr. M. Shobha Raghuveera - ITA No. 47/HYD/20 1 3
7. DCIT V. Ateev V. Gala - 20 1 7 Tax Pub (DT) 1 5 1 9(Mum-Trib)

10. It is only in the case of the assessee in Assessment Year 2012-13 that it has been held otherwise. The Ld. D.R. has not pointed out any other decision of the ITAT holding such amounts to be taxable in the hands of the assessee.

11. We have also gone through all the decision as above and we find that interpreting the said section ,it has been noted in the said decisions that the section provides an exception to its applicability ,by way of proviso ,providing therein that sums received from relatives ,as defined in the section, will not qualify for taxability under the section. In all of the above decisions, except in the case of Pankil Garg (supra), the ITAT has consistently held that the gift given by HUF to its members falls within the contours of gift from such specified relatives, and accordingly are excluded from the applicability of the said section. The ITAT has held that the term relative defined in the section is not confined to gift from a single relative but can also include gift from group of relatives, which is the case in the case of HUF's who are group of relatives as defined in Section 56(2)(vii) of the Act. We have also noted that the ITAT has also referred to the exemption provision u/s. 10(2) of the Act which exempt amounts given to members of HUF from the HUF income which has been subjected to tax. Referring to the said Section ITAT has held that the amount gifted to a member being out of its taxable income, is exempt from tax when given to a member of the HUF as per Section 10(2) of the Act.

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*

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 pre-existing 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

> *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 above 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."*

12. In the case of assessee in the assessment year i.e. 2012-13, the issue has been decided against the assessee by the ITAT holding that HUF per se is not covered in the definition of relative u/s. 56(2)(vii) of the Act and therefore gifts from HUF to members are not covered in the exception provided to the said section. The ITAT has also pointed out that while the reverse of gift from member to HUF is covered in the exception, the legislature has deliberately left out the reverse and therefore the intention of the legislature is clear being treating the gifts from HUF to members as taxable.

12.1 Considering the consistent decisions of the ITAT in favour of the assessee, more particularly that of the ITAT Chandigarh Bench in the case of Pankil Garg(supra) which has been rendered subsequent to the decision of the ITAT in the case of assessee itself ,having been pronounced on 17/03/2019 while the decision in the case of assessee is dated 21st February 2018, and noting particularly that the ITAT in the said case held the amount given by HUF to its member as not qualifying as gift itself, the decision in the case of assessee in the preceding year, we find, stands clearly distinguished wherein we find that the ITAT has proceeded on the premise that the amount given by the HUF to its members is a gift, which premise has been found to be incorrect in law by the ITAT Chandigarh Bench in the case of Pankil Garg (supra).

13. In view of the above, therefore, we are of the view that the decision of the ITAT Chandigarh Bench in the case of Pankil Garg(supra) would squarely apply to the present case following which we hold that the amount received by the assessee from its HUF of Rs. 50 lakhs is not in the nature of any sum received without consideration/gift and therefore not exigible to tax as per provisions of Section 56(2)(vii) of the Act .The addition so made and upheld by the Ld. CIT(A) is therefore directed to be deleted. The order of the Ld. CIT(A) is accordingly set aside. Grounds of appeal raised by the assessee are allowed in above terms.

14. In effect, appeal filed by the Assessee is allowed.

Order pronounced in the open court on 25 -03-2022

Sd/-	**Sd/-**
(TR SENTHIL KUMAR)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER **True Copy**	**ACCOUNTANT MEMBER**

Ahmedabad : Dated 25 /03/2022

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद