**(1994) 09 MAD CK 0098**

**In the Madras High Court**

**Case No :** Tax Case No. 783 of 1981 (Reference No. 349 of 1981)

Commissioner of Income Tax APPELLANT

Vs

R. Vijayakumar RESPONDENT

**Date of Decision :** 06-09-1994

**Acts Referred:**
Income Tax Act, 1961 — Section 54B

**Citation :** (1995) 214 ITR 483

**Hon'ble Judges :** K.A. Thanikkachalam, J;Gulab C. Gupta, J

**Bench :** Division Bench

**Advocate :** C.V. Rajan, for the Appellant;

# Judgement

Thanikkachalam, J.—At the instance of the Department, the following question was referred to us for our opinion u/s 256(1) of the Income Tax Act, 1961:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee is entitled to exemption u/s 54B even though he is assessed to tax in the status of a Hindu undivided family, and consequently no capital gains could be assessed to tax for the assessment year 1975-76?"

2. The assessee is a Hindu undivided family of which Sri Vijayakumar is the karta. It sold agricultural lands situate in Krishnarayapuram within the Coimbatore municipal limits on August 3, 1974, for Rs. 2,25,000. The sale deed was registered on August 14, 1974. The assessee also purchased agricultural lands situated in Kalikkanaickenpalayam for Rs. 2,35,000 under a sale deed dated July 10, 1975. For the assessment year 1975-76, the assessee filed a return disclosing an income of Rs. 12,375. In doing so, it has not offered the gains arising from the sale of agricultural lands for tax.

3. The Income Tax Officer held, in view of the provision contained in section 54B of the Income Tax Act, the Hindu undivided family is not entitled to the exemption. However, on appeal, the Appellate Assistant Commissioner allowed

the exemption claimed by the assessee. On further appeal, the Appellate Tribunal concurred with the view taken by the Appellate Assistant Commissioner.

4. Learned standing counsel for the Department brought to our notice a decision of the Madras High Court in Commissioner of Income Tax Vs. G.K. Devarajulu, , wherein it is clearly held that the exemption u/s 54B is not available to the Hindu undivided family, but is available only to an individual. In view of the abovesaid decision of this High Court cited supra, the order passed by the Tribunal is not sustainable. Accordingly, we answer the question referred to us in the negative and in favour of the Department. No costs.

 