

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA Nos.1667&1668, 1674&1675, 1676-85, /Bang/2014
Assessment years : 2006-07 to 2012-13

ITA Nos.	Appellant	Assessment Year		Respondent
1667/Bang/2014	The Income Tax Officer, Ward-1, Hassan.	2010-11	Vs.	AOP of Bommegowda and Rangegowda, Paduvalahippe Village, Hole Narasipura Taluk, Hassan District. PAN : BR002/HSN
1668/Bang/2014	The Income Tax Officer, Ward-1, Hassan.	2011-12	Vs.	AOP of Bommegowda and Rangegowda, Paduvalahippe Village, Hole Narasipura Taluk, Hassan District. PAN : BR002/HSN
1674/Bang/2014	The Income Tax Officer, Ward-1, Hassan.	2010-11	Vs.	AOP of Basavegowda and Venkatesh, Paduvalahippe Village, Hole Narasipura Taluk, Hassan District. PAN : BV001/HSN
1675/Bang/2014	The Income Tax Officer, Ward-1, Hassan.	2011-12	Vs.	AOP of Basavegowda and Venkatesh, Paduvalahippe Village, Hole Narasipura Taluk, Hassan District. PAN : BV001/HSN
1676/Bang/2014	The Income Tax Officer, Ward-1, Hassan.	2006-07	Vs.	AOP of Paduvalahippe Village, Group-I, Paduvalahippe Village, Hole Narasipura Taluk, Hassan District. PAN : PV001/HSN

1677/Bang/2014	The Income Tax Officer, Ward-1, Hassan.	2007-08	Vs.	AOP of Paduvalahippe Village, Group-I, Paduvalahippe Village, Hole Narasipura Taluk, Hassan District. PAN : PV001/HSN
1678/Bang/2014	The Income Tax Officer, Ward-1, Hassan.	2008-09	Vs.	AOP of Paduvalahippe Village, Group-I, Paduvalahippe Village, Hole Narasipura Taluk, Hassan District. PAN : PV001/HSN
1679/Bang/2014	The Income Tax Officer, Ward-1, Hassan.	2009-10	Vs.	AOP of Paduvalahippe Village, Group-I, Paduvalahippe Village, Hole Narasipura Taluk, Hassan District. PAN : PV001/HSN
1680/Bang/2014	The Income Tax Officer, Ward-1, Hassan.	2010-11	Vs.	AOP of Paduvalahippe Village, Group-I, Paduvalahippe Village, Hole Narasipura Taluk, Hassan District. PAN : PV001/HSN
1681/Bang/2014	The Income Tax Officer, Ward-1, Hassan.	2011-12	Vs.	AOP of Paduvalahippe Village, Group-I, Paduvalahippe Village, Hole Narasipura Taluk, Hassan District. PAN : PV001/HSN
1682/Bang/2014	The Income Tax Officer, Ward-1, Hassan.	2012-13	Vs.	AOP of Paduvalahippe Village, Group-I, Paduvalahippe Village, Hole Narasipura Taluk, Hassan District. PAN : PV001/HSN
1683/Bang/2014	The Income Tax Officer, Ward-1, Hassan.	2010-11	Vs.	AOP of Paduvalahippe Village, Group-2, Paduvalahippe Village, Hole Narasipura Taluk, Hassan District. PAN : PV002/HSN

1684/Bang/2014	The Income Tax Officer, Ward-1, Hassan.	2011-12	Vs.	AOP of Paduvalahippe Village, Group-2, Hole Narasipura Taluk, Hassan District. PAN : PV002/HSN
1685/Bang/2014	The Income Tax Officer, Ward-1, Hassan.	2012-13	Vs.	AOP of Paduvalahippe Village, Group-2, Paduvalahippe Village, Hole Narasipura Taluk, Hassan District. PAN : PV002/HSN

Revenue by	:	Shri. G. Kamaladhar, Standing Counsel
Assessee by	:	Shri. H. C. Kincha, CA

Date of hearing	:	08.02.2017
Date of Pronouncement	:	23.02.2017

ORDER

Per Bench

These are the appeals arising out of the order dated 05.08.2014 with the following grounds:

2. Grounds of Appeal:

1. The CIT(A) erred in following the ratio of the decision of Hon'ble Delhi High Court in the case of Linde AG, Linde Engg. Division *V.* Deputy DIT (Delhi) 365 ITR 1 wherein the consortium of Linde – Samsung was a one-time cooperation of two individual independent and separate legal entities with a defined split of scope of work whereas in the instant case, the bank accounts in the joint names were existing since a long time and the control and operation of these accounts was very much in the hands of the two persons.
2. The CIT(A) erred in overlooking the fact that there existed a volition on the part of the members of the association, which is an essential ingredient for formation of an AOP.
3. The CIT(A) erred in accepting the submission of the assessee that the crops of the villagers were damaged due to the plying of the vehicles of sand transporters since no evidence, whatsoever, was submitted by the assessee either during the course of assessment proceedings or during the appellate proceedings.
4. The CIT(A) erred in holding that the receipts from sand transporters represented the compensation for damage to crops was a fact admitted by the Assessing Officer whereas the Assessing Officer had not accepted this claim of the assessee in the absence of evidences.
5. The CIT(A) erred in holding that the receipts are either capital or agricultural in nature by merely relying upon the submissions of the assessee and without examining the veracity of the claim.
6. The CIT(A) further erred in holding that the receipts deposited in Bank accounts are either capital in nature or agricultural income, since the Assessing Officer had not accepted the assessee's claim that the deposits in bank accounts represented collection from sand transporters.
7. The CIT(A)'s decision that the receipts are 'either capital in nature or in the nature of agricultural income' is ambiguous and opposed to facts of the case. The CIT(A) erred in not giving a clear finding in this regard.
8. For these and such other grounds that may be urged at the time of hearing, the order of the Assessing Officer be restored and that of the CIT(A) be set aside.

3. On 14.4.2016, the revenue has filed another additional 3 grounds which are as under:

1	The Hon'ble CIT(A) erred in holding that the "So called Individuals" at para 9 of the order whereas when there was no such individuals in the said case.
2	The assessment order is in the status of AOP. The Demand Notices/Challans etc were served on the members of the AOP . Hence, an appeal filed before the Hon'ble ITAT may be rejected and sent back to the CIT(A) for fresh adjudication or
3	Filing of the appeal by the appellants may be sustained and the order of the Assessing Officer may be confirmed.

4. At the outset, the learned AR for the respondent has made the objection about the maintainability of the appeal and submitted that as per Rule 14 of the Income Tax Income Appellate Tribunal rules, the appellant herein (revenue) has not made the appeal before the CIT(A) as respondent in the present appeal and submitted that present appeals are required to be dismissed. The learned AR has drawn our attention to rule 14 which provides as under:

"In an appeal by the Income-tax Officer 1[/Assessing Officer] under sub-section (2) of section 253, the appellant before the Appellate Assistant Commissioner 1[/Commissioner of Income-tax (Appeals)] shall be made a respondent to the appeal."

5. The learned AR has also drawn our attention to section 2(7) which reads as under:

²⁶(7) "assessee"²⁷ means a person by whom ²⁸[any tax] or any other sum of money is payable under this Act, and includes—

(a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income ²⁹[or assessment of fringe benefits] or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person ;

(b) every person who is deemed to be an assessee under any provision

of this Act ;
(c) *every person who is deemed to be an assessee in default under any provision of this Act ;”*

6. The learned AR has also referred to section 156 which reads as under:

“156. Notice of demand.- *When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable :*

Provided that where any sum is determined to be payable by the assessee under sub-section (1) of section 143, the intimation under that sub-section shall be deemed to be a notice of demand for the purposes of this section.”

7. On the basis of the above, it was contended by the AR that the appellant before the CIT(A) was an individual, as he has filed the appeal against the order passed by the AO, as the status of the assessee has been changed from individual to AOP. Therefore, it was submitted that the appellant should have made the individual as the respondent/s, in the present appeal, instead of filing the appeal against AOP arraying as respondent.

8. Per contra, the learned counsel for the appellant has drawn our attention to the assessment order wherein in column 1 of the assessment order, it is mentioned in the name of the assessee as AOP of Shri. Bommegowda and Shri.Rangegowda. He has also drawn our attention to the order of CIT(A) wherein the name of appellant has been mentioned as Shri. Rangegowda, AOP of Shri. Bommegowda and Shri.Rangegowda. It was submitted by the learned counsel on behalf

of the appellant that no prejudice was caused to the present respondent by filling the appeal in the name of AOP of Shri. Bommegowda and Shri. Rangegowda.

9. We have heard the parties and perused the record. The revenue can prefer an appeal against the order passed by the CIT(A) u/s 253(2) of the Act before the Appellate Tribunal. The procedure of the Appellate Tribunal is provided u/s 255 of the IT Act. The Tribunal while exercising its power u/s 255(5) of the Act had framed the rules to regulate the procedure of Appellate Tribunal. As is clear from Section 253(2), the department, if objects to an order passed by CIT, may direct AO to file an appeal before the Appellate Tribunal. In the present case, the CIT(A) has passed an order on the appeal of Shri. Bommegowda and Shri. Rangegowda without ensuring that AOP of Shri. Bommegowda and Shri. Rangegowda is to be made as a party against which the assessment order was passed.

10. In our view, the impugned order can be challenged by the revenue before the Tribunal only by making the AOP of Shri. Bommegowda and Shri. Rangegowda as respondent in the present case. Admittedly, Shri. Bommegowda and Shri. Rangegowda were part of the AOP and therefore there is a compliance of the rule 14 of ITAT rules of 1963. Moreover, "Appellant before the CIT" used in Rule 14 of ITAT Rules, 1963, is required to be interpreted liberally, so as to include any other person, against whom the initial order was passed by the assessing officer, should also be permitted to be respondent in the appeal filled by the Revenue. Merely because one of the Assessee has preferred an appeal before the CIT(A) will not

withhold the revenue from filling the appeal against the actual person against whom the assessment order was passed by the AO. In our view, under the scheme of the Act an appeal may be preferred by the assessee or by any collector or by any person denying liability to deduct tax in certain cases before the CIT(A). Therefore, to say that the person who had preferred an appeal before the commissioner should be made a party as a respondent in the appeal of the revenue as against the actual person against whom the assessment order was passed by AO, is not correct interpretation of rule 14 of ITAT Rules, 1963. The rules were framed to advance the cause of justice and are supplementary to the Act, if strict interpretation is done then it will lead to anomaly, as the revenue will not be able to file appeal against the person originally assessed by the AO.

11. The order of the CIT(A) challenged before us, it is clearly mentioned that appellant is Shri. Rangegowda AOP of Shri. Bommegowda and Shri.Rangegowda. Before the Commissioner as well before Tribunal, Shri.Nagin Kincha, CA was representing the assessee (however till date he had not filled POA on behalf of respondents) i.e., AOP of Shri.Bommegowda and Shri.Rangegowda and individuals. Therefore no prejudice would cause to the assessee before us for not impleading the individuals before CIT(A). It is only a technical objection which was raised by the learned AR. Further under the rules, the consequence of filing the appeal without impeding the appellant before the CIT(A) has not been provided in the Act or in Rules as it is provided under order 7 rule 11 of Civil Procedure Code. Our view is also supported by judgment of Hon'ble Delhi high court in

similar facts in the matter of [1975] 99 ITR 552 (DELHI) Commissioner of Income-tax v. Income-Tax Appellate Tribunal wherein it was held as under:

“The Tribunal held that Reference Application No. 1722 of 1964-65 was a nullity and thus dismissed the same rejecting the contention of the revenue that the defect in not properly describing the respondents be allowed to be removed as allowing such a request, according to the Tribunal, would amount to substituting altogether a new application in the name of removing the defect. The Tribunal rejected the reference application also on the ground that the assessee in the said application was stated to be "SahuJagdish Prasad and others". The Tribunal put a question to itself as to who those "others" were because it was not indicated in the appeal wherefrom to get them.

It was required of the department to mention the names of all the respondents clearly but at any rate the fact remains that the department had indicated the name of the assessee-family as SahuJagdish Prasad, Pilibhit. Much capital cannot be made out of the fact that instead of giving the names of other respondents clearly the department chose to describe them as "and others".

The Tribunal's powers in dealing with the appeals are of widest amplitude and identical with the powers of an appellate court under the Code of Civil Procedure as observed by their Lordships of the Supreme Court in the case, Income-tax Officer, Cannanore v. M.K. Mohammed Kunhi [1969] 71 ITR 815. The Tribunal is not a court but it exercises judicial powers. As observed in the above-cited case because of its appellate jurisdiction the Tribunal has the power of doing all such acts or employing such means as are essentially necessary for making orders for staying proceedings to prevent an appeal, if successful, from being rendered nugatory. Because of the powers of the Tribunal which are of "widest amplitude and identical with the powers of an appellate court under the Code of Civil Procedure" in the circumstances of the case the Tribunal should have permitted the department to rectify the mistake in mentioning the names of the other respondents clearly instead of their being described as "and others".

Reference here may be made to the case, Jhuta Ram v. Ram Sarup AIR 1937 Lah. 60. In that case a suit was instituted against several defendants of whom three were minors. The minor defendants were first represented by their relations as their

respective guardians but subsequently as those relations refused to act as guardian a court official was appointed as the guardian of the minor defendants. The suit was dismissed. The plaintiff filed an appeal. The minor defendants-respondents were shown as being represented by the original guardian, their relations, and not by the court official. The appeal was dismissed by the first appellate court on the ground that the appeal was not properly represented as against the minors and could not, therefore, proceed as it could not proceed against those minors, having thus abated in its entirety. The view that it had abated was negatived holding that there was no question of abatement in the case. It was observed that the fact that there was a mistake in the description of the respondents should not entail the dismissal of the appeal. The defect in not properly impleading the respondents as parties to the appeal was held to be a formal one which should be allowed to be corrected when brought to the notice of the court. The case was accordingly remanded to the first appellate court with a direction to proceed with the appeal on merits after the description of the minor defendants had been corrected and the service effected on their guardian.

Reference may also be made to a Division Bench decision of the Oudh High Court in Ch. KanhayaBux Singh v. Mst. Ram Devi Kuer AIR 1944 Oudh 62. In that case in the grounds of appeal the appellants named themselves but did not mention the names of the idols, who were defendants in the suit, either in the category of the persons appealing or in that of the respondents. Objection to the competency of the appeal was repelled holding that omission of names of the idols in the grounds of appeal amounted merely to a mis-description. The appellants were permitted to amend the memorandum of appeal so as to show distinctly the names of the idols. The omission was held not to have the effect of rendering the judgment of the trial court final in regard to the question affecting the idols who were not impleaded as parties to the appeal.

Omission to implead the names of the other respondents in the appeal merely amounted to a mis-description and being a formal one should have been allowed to be corrected when brought to the notice of the Tribunal rather than entail the dismissal of the reference application.”

12. In the light of the above, the objection of the learned AR for the assessee is without any substance and is therefore rejected.

13. In the assessment order, we noticed that initially the notices u/s 142(1) were issued against Shri. Bommegowda and Shri. Rangegowda only. However, when they left the office of the AO in the middle of giving the statements on 23.02.2012, then the AO had sent the notices under section 142(1) to AOP of Shri. Bommegowda and Shri. Rangegowda. The relevant paragraphs mentioning the above said facts in the Assessment Order are as under:

This is a case where certain huge transactions were found in the bank account standing in the name of Sri Bommegowda and Rangegowda at Cauvery Kalpatharu Grameen Bank (CKGB) Padavalahippe Village Branch, Holenarasipura Taluk, Hassan District. The account was operational from 04/05/2010. The total amount outstanding in the said bank account i.e., Account NO. 13102023278 as on 31/01/2012, the day on which certain enquiries were conducted in the said branch of CKGB was Rs.72,62,385/-.

In addition, there was one more bank account standing in the name of Shri Basave Gowda and Shri Venkatesh. This account bearing number 013102014627 was operational since F.Y. 1994-95.

Since, the issues are common in both cases, common discussions will be appearing in the assessment order which would be applicable to both the cases based on the facts.

Notices u/s 142(1) dt 31/01/2012 were issued for the A.Y 2010-11 and 2011-12 calling for the returns of income in the case of Sri Basave Gowda and Shri Bomme Gowda on 31/01/2012. In order to protect the interest of revenue the said bank accounts were attached under section 281B after obtaining the approval of the Commissioner of Incometax, Mysore. In the due course notices u/s 148 were issued calling for returns of income of Sri Basave Gowda. Summons u/s 131 was issued on 21/02/2012, seeking to gather the information on the process of transactions in the bank account. Statements u/s 131 of the Incometax Act were being recorded on 23/02/2012, when the assesses, i.e. Shri Basave Gowda and Shri Bomme Gowda left the office premises without giving complete information about the sources of transactions in the bank account, usage of it, nature of evidences maintained if any, etc. The statement was being recorded in the presence of Sri Sadananda Dodamani, ITI and Sri Dharmappa, Notice Server. The assessee in the middle of statement left in a hurry without signing the statements. Thus, the question as to whom the money belongs remained anonymous inspite of there being the transactions in cash and availability of cash in the bank account. In this statement, the last question that was posed was about the books of account and it was stated that the books are with one Sri Padmanabha, CA who was on a

foreign tour and it was stated that the book cannot be produced immediately for this reason.

Though the bank accounts were attached u/s 281B of the IT Act 1961, ultimately, it should result in an assessment on the proper person to whom the money belongs to, which is the primary duty of the department. The Non-cooperation and the utter disregard to the law shown by the assessees Sri Basavegowda and Shri Bomme Gowda did not help the department in finding out to whom the money belongs to at that point of time. Accordingly, notices u/s 142(1) in the cases connected to the present one as under, seeking to bring to tax the income appearing in the bank accounts that has escaped assessment, including notices issued u/s 142(1) already..

Sl No.	Name of Assessee	Asst Year	Notice issued u/s	Date of Notice
1	Sri Bomme Gowda	2010-11	142 (1)	31-01-2012
2	Sri Bomme Gowda	2011-12	142 (1)	31-01-2012
3	Sri Range Gowda	2010-11	142 (1)	22-03-2012
4	Sri Range Gowda	2011-12	142 (1)	22-03-2012
5	AOP of Sri Bomme Gowda & Sri Range Gowda	2010-11	142 (1)	22-03-2012
6	AOP of Sri Bomme Gowda & Sri Range Gowda	2011-12	142 (1)	22-03-2012

In view of the non-cooperation, the department had to work with the available information. From the bank i.e., CKGB, Padavalahippe, it was gathered that none of the parties i.e. Shri Basave Gowda, Shri Venkatesh, Shri Bomme Gowda and Shri Range Gowda have quoted the PAN in the bank records and thus it was assumed that none of them have Permanent Account Numbers.

14. We have noticed that the appeal was filed before the CIT(A) in the individual capacity by Shri. Rangegowda and others and is clear from Form 35. The details of the 19 appeals preferred against the assessment orders are as under:

ITA No. (1)	Assessment Year (2)	CIT(A) ITA No's (3)	Appellant before CIT(A) (4)	Respondent as mentioned in Dept appeal memo (5)
1667 / Bang / 2014	2010-11	44 / CIT(A) / Mys / 2013-14	Rangegowda Padavalahippe Village, Holenarasipura, Taluk, Hassan District.	AOP of Bommegowda & Rangegowda, Paduvalahippe Village, Holenarasipura Taluk, Hassan
1668/ Bang / 2014	2011-12	47 / CIT(A) / Mys / 2013-14	Bommegowda Padavalahippe Village, Holenarasipura, Taluk, Hassan District.	AOP of Bommegowda & Rangegowda, Paduvalahippe Village, Holenarasipura Taluk, Hassan
1669 / Bang / 2014	2005-06	37 / CIT(A) / Mys / 2013-14	Basavegowda Padavalahippe Village, Holenarasipura, Taluk, Hassan District.	AOP of Basavegowda & Venkatesh Paduvalahippe Village, Holenarasipura Taluk, Hassan

1681/ Bang / 2014	2011-12	158 / CIT(A) / Mys / 2013-14	Basavegowda Order passed in the case of AOP of Padavalahippe Village, Group - 1 Holenarasipura, Taluk, Hassan District.	AOP of Paduvalahippe Village, Group - 1 Paduvalahippe Village, Holenarasipura Taluk, Hassan District
1682/ Bang / 2014	2012-13	159 / CIT(A) / Mys / 2013-14	Basavegowda Order passed in the case of AOP of Padavalahippe Village, Group - 1 Holenarasipura, Taluk, Hassan District.	AOP of Paduvalahippe Village, Group - 1 Paduvalahippe Village, Holenarasipura Taluk, Hassan District
1683/ Bang / 2014	2010-11	160 / CIT(A) / Mys / 2013-14	Basavegowda Order passed in the case of AOP of Padavalahippe Village, Group - 1 Holenarasipura, Taluk, Hassan District.	AOP of Paduvalahippe Village, Group - 2 Holenarasipura Taluk, Hassan District
1684/ Bang / 2014	2011-12	151 / CIT(A) / Mys / 2013-14	Venkatesh Order passed in the case of AOP of Padavalahippe Village, Group - 2 Holenarasipura, Taluk, Hassan District.	AOP of Paduvalahippe Village, Group - 2 Holenarasipura Taluk, Hassan District
1685/ Bang / 2014	2012-13	152 / CIT(A) / Mys / 2013-14	Venkatesh Order passed in the case of AOP of Padavalahippe Village, Group - 2 Holenarasipura, Taluk, Hassan District.	AOP of Paduvalahippe Village, Group - 2 Holenarasipura Taluk, Hassan District

15. Before the AO, Shri. A. Shridhar, Advocate appeared on 08.02.2013 under the signature of Shri. Bommegowda and Shri. Rangegowda. The contents of the letter were reproduced in the Assessment Order to the following fact:

“Gist of the letter:

We are the residents of Paduvalahippe Village. Due to the transportation of sand in about 25 to 30 lorries through private transporters, villagers were suffering due to many fallouts of the same. In a meeting dated 02.04.2009, the villagers took certain decisions copy of which is enclosed.

Running of lorries on the lands owned by the villagers has caused a lot of damage and brought health problems to the people. In order to make up for the loss and since the village panchayath or the Government did not take any action, it is decided to collect Rs.1,000/- per lorry as penalty. Further, to collect this penalty, Shri. Venkatesh, S/o. HanumatheGowda, shri. Basavegowda, S/o. GowdeGowda, Shri.BommeGowda, s/o EreGowda and Shri. Range Gowda, S/o LakkeGowda have been authorized who are well known persons of the village. Further, it is decided to open a bank account at Cauvery Kalpatharu Grameena Bank, Paduvalahippe in the joint names of Shri. Venkatesh, S/oHanumatheGowda, Shri. BasaveGowda, S/o GowdeGowda, Shri. Bomme Gowda, S/o Ere Gowda and Shri. Range Gowda, S/o LakkeGowda. It is also decided to disburse the money among the 140 agricultural oriented families equally.

Signed BommeGowda and Range Gowda

Translation of minutes of meeting dt. 02.04.2009

Subject: Transportation of sand from Hemavathi River by 10 to 15 lorry loads of sand by private transporters and loss to the members of village and farmers – action to be taken – reg.

Decision: The respected citizens of Paduvalahippe Shri. Venkatsh and Shri.BasaveGowda and others have informed that daily some private lorry owners are transporting about 25 to 30 loads of sand from Paduvalahippe village and since there is no road contact to the Hemavathi River bank, they are running the lorries

through the agricultural lands of Paduvalahippe village. This has created huge loss to the crops and the farms.

Due to too much of lorry transport, the villagers are also suffering from health hazards like fever, cough etc. Even the water of Hemavathiriver has become dirty and the cattle are not able to use the Hemavathi water due to pollution. Even the GramaPanchayath has not taken any action to prevent this. In order to make up for the losses the respected villagers discussed the issues and decided to collect Rs.1,000/- per lorry from the lorry transporters. The powers to collect this money is delegated to Shri. Venkatsh, S/o GowdeGowda, Shri. BommeGowda, S/o EreGowda and Shri. Range Gowda, S/o LakkeGowda. It is further decided to open two bank accounts in joint names at CauveryKalpatharuGrameena Bank, Paduvalahippe. It was decided to disburse the amount so collected among the 140 agricultural oriented families equally.

Signed by: Venkatesh, BasaveGowda, BommeGowda and Range Gowda.”

16. The learned CIT while passing the order in the appeal of Shri. Rangegowda in paragraphs 24 to 25 has held as under:

24. In this case, as the facts would emerge, there were certain outsiders who were extracting sand from the village and transporting the same from village to outside places and in the course thereof, their trucks and vehicles were trampling the fields and crops of the village and damaging the village properties. It further transpires that a larger body of Villagers held a meeting and decided to collect some money from these transporters based on the type of vehicles used. The moneys' so collected was deposited in two bank accounts and for such bank accounts few villagers were authorized to open and operate such bank accounts.



25. Now the question would arise as to whether the two persons

who were allowed to open the bank accounts and operate the same, constituted an AOP by themselves. In my view, the mere fact of operating an account jointly and that too under the instructions from other people would not by itself amount to constitution of an 'AOP' and also make these persons as members of AOP. More so their joining together for bank operation cannot be said to be joining for any particular venture. At best it is acting like a trustee or acting in a fiduciary capacity. Therefore the two persons who were required to open and operate a bank account could not be said to have constituted an AOP in the strict terms of the word especially when these two persons who operated the accounts had no exclusive right and the interest therein nor did they have any exclusive/overriding right to use or direct the user of such funds. Therefore in view of the above and in view of clear finding of Delhi High Court referred to above, treating the two persons, operating the accounts as AOP in the first set of appeals is incorrect and not supported by any law. Therefore the first set of orders does not have any legs to stand in law and have to be quashed in entirety.

17. If we examine the conclusion arrived at by the learned CIT(A), then it is clear that he held that the accounts were being operated by two or more persons viz., Shri. Bommegowda and Shri.Rangegowda and also by Shri.Venkatesh and Shri.Basavegowda in terms of the minutes of the meeting of the members of the village and were collecting and depositing amount in their respective accounts. However, the learned CIT has held that two persons operating the accounts cannot constitute as AOP and therefore the order of the AO has no legs to stand. In our view, the order passed by the learned CIT(A) is bereft of any reasoning as was passed without appreciating the facts on record. It is a consistent case of the persons before the AO viz., Shri. Bommegowda and Shri.Rangegowda, Shri. Basavegowda and Shri.Venkatesh were authorized by the villagers consisting of 140 persons to collect the amount from the lorry ferrying sand from the river bed and this has been done with a view to develop the infrastructure in the village in the form of road, etc. However, despite the notices and opportunity given by the learned AO,

the said two persons have failed to bring on record of the members who have authorized them to collect and have further failed to give any record of expenditure made by them for the construction, repair and maintenance of the road, etc.

18. In the light of the above, the AO has concluded that the amount deposited in the form of cash in the bank account remained unexplained. The learned CIT(A) has decided the appeal on the basis of the appellant before him without ensuring that all the persons forming AOP whether registered or unregistered were impleaded in appeal before him if the status of the AOP have been disputed that the accounts and amount belonged to them.

19. The Appellant before CIT(A) have not disputed that the accounts do not belong to them, further they have not disputed that the cash was not deposited by them, they have not disputed that the cash was collected by them legally or illegally from the lorry drivers/vehicle owners to remove sands from the river bank. They have also not disputed that they are authorized by the residents of the village by a resolution to collect the amount. They have also not disputed that the said amount was required to be spent for the purposes of welfare of the club. We are in agreement with the contention of the learned AR that as per section 4 of the Income Tax Act, the tax is chargeable in respect of the total income of the previous year of every person and a person is defined in section 2(31) of the IT Act. The AOP (Association of Persons) or body of individuals whether incorporated or not falls within the definition of person. The appellant before the CIT (the

persons before the AO) were required to explain the amount deposited in the account and they have explained the said amount by way of their response in their letter dated 08.02.2013 as mentioned herein above. Thus, in our view, either the money belongs to the persons in whose names the accounts were maintained in the bank to whom notices under section 142(1) of the Act were given or the money belongs to the association of the persons who have authorized them to collect the amount. As the appellants before the CIT(A) were not cooperating during the assessment proceedings, therefore the AO left the office before they could be examined under section 131. The AO was having no other option but to adjudicate the issue on the basis of the material available with him.

20. In the light of the above, we deem it appropriate to remand the matter to the file of the CIT with the following direction:

- i. That the CIT(A) shall issue the appropriate notice/notices to the account holders of the two savings bank accounts bearing Nos.013102023278 and 013102014627 with Cauvery Kalpatharu Grameen Bank, Padavalahippe Village.
- ii. The CIT(A) shall in addition to the above said may also issue the notice to any other person, as may be informed to him by the account holders (assessee) stating that the money belongs to the other persons. In case the person in whose names the accounts were maintained namely Shri. Bommegowda and Shri. Rangegowda fail to give details or particulars of the names and addresses of the persons who in their estimation the amount lying in the bank account belongs to them or they

had been authorized by them to collect the amount then, in our view, the assessment proceedings shall be completed against the Shri. Bommegowda and Shri. Rangegowda in accordance with the law after following the due process treating the amount to be of the persons/account holders.

21. We have decided the appeal bearing No.1667/Bang/2014. Having only stated the facts of the said case, we notice that the facts of other appeals are similar to the facts of appeal No. 1667/Bang/2014. Therefore, we have not decided each appeal separately. However, we direct the CIT(A) to deal with each appeal by following the directions given in para 23 to each of the assesseees / AOP in every appeal.

22. In the result, the appeals of the revenue are allowed for the statistical purposes.

Pronounced in the open court on this 23rd day of February, 2017.

Sd/-
(A. K. GARODIA)
Accountant Member

Sd/-
(LALIET KUMAR)
Judicial Member

Bangalore.

Dated: 23rd February, 2017.

/NS/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.00