

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

Sl. No.	ITA Nos. & Assessment Year	Appellant	Respondent
1.	ITA No. 739/Bang/2016 AY: 2008-09 ITA No. 740/Bang/2016 AY: 2009-10 ITA No. 741/Bang/2016 AY: 2010-11	Income Tax Officer, Ward-1(1), Hubballi.	Shri. Nasiruddin P. Bagwan Bagwan Building, Behind Manikbag Automobiles, Vidya Nagar, Hubballi-31. PAN : AIQPB9226M
2.	ITA No. 742/Bang/2016 AY: 2008-09 ITA No. 743/Bang/2016 AY: 2009-10 ITA No. 744/Bang/2016 AY: 2010-11	Income Tax Officer, Ward-1(1), Hubballi.	Shri. Raheesahmed N Bagwan, Bagwan Building, Behind Manikbag Automobiles, Vidya Nagar, Hubballi-31. PAN : AJEPB0321L
	ITA No. 745/Bang/2016 AY: 2008-09 ITA No. 746/Bang/2016 AY: 2009-10 ITA No. 747/Bang/2016 AY: 2010-11	Income Tax Officer, Ward-1(1), Hubballi.	Smt. Fatima N Bagwan, Bagwan Building, Behind Manikbag Automobiles, Vidya Nagar, Hubballi-31. PAN : AGNPB2986M

Appellant by	:	Shri. G. Kamaladar, Standing Counsel
Respondent by	:	Shri. Ravishankar, Advocate

Date of hearing	:	23.03.2017
Date of Pronouncement	:	24.03.2017

O R D E R

Per Bench

These appeals are preferred by the revenue against the respective order of the CIT(A) on common grounds. We, however, for the sake of reference, extract the grounds raised in ITA No.739/2016.

1. *The order of the CIT(A) is opposed to law and facts of the case.*
2. *The CIT(A) erred in deleting the addition made of Rs. 13,78,845/- in the hands of the individual being bank credits during the year and 1/3rd of the cash receipts.*
3. *The CIT(A) erred in deleting the additions made of Rs. 13,78,845/- under the head "profits and gains from business" which confirming the same on page 13 of the same order.*
4. *The CIT(A) erred in not considering the fact that the assessee is in the real estate business and has entered into a Joint Development agreement with the Developers for development of land at Mavanur village, Hubballi into residential layout and for the development of its land at Karwar Road, hubballi into commercial and residential complex.*
5. *The CIT(A) erred in considering the fact that the assessment order was passed ex-parte u/s 144 of the IT Act, 1961 for the reason that the assessee failed to file any evidences despite ample opportunities afforded during the assessment proceedings.*
6.
 - i. *The CIT(A) erred in deleting the additions of Rs. 13,78,845/- made on account of receipts deposited in the bank account of the family members of Sri Nasiruddin Bagwan as net income in lieu of the Joint venture agreement entered into with the developer*
 - ii. *As such, the CIT(A) erred in not appreciating the fact that the receipts in the bank account represents the net income of the assessee as per the joint venture agreement.*
 - iii. *The CIT(A) erred in not considering the fact that as per the joint development agreements, the entire expenditure for the development of these projects is to be borne by the developers and as such, the entire receipts received by the assessee represents the net income of the assessee for the assessment year in question and is rightly brought to tax in the hands of the assessee individual.*

iv. The CIT(A) grossly erred in not appreciating the issues dealt with by him in the appellate order for deletion as such are not emanating from the assessment order of te AO and the Ld. CIT(A) has decided the issues on different footing after considering the fresh evidences in contravention to rule 46A(3) of the I T Rules.

2. During the course of hearing, the learned counsel for the assessee has invited our attention that in the hands of the assessee, the assessment was framed on protective basis. The substantive assessment was framed in the hands of AOP i.e., N. P Bagwan & others. Appeals filed by the revenue in the case of N. P. Bagwan & others were taken up by the Tribunal and the Tribunal vide its order dated 30.06.2016 set aside the order of the CIT(A) and restored the matter to the AO with the directions to readjudicate the issue afresh after affording an opportunity of being heard to the assesseees in terms indicated in the order. Now when the entire issue is open for the AO, the assessment framed in protective basis cannot be substantiated. In the light of these facts, this matter in the present appeals should also go back to the AO to pass appropriate order in the light of the assessment order framed in the hands of AOP i.e., N. P. Bagwan and others.

3. The learned DR simply placed the reliance upon the assessment order.

4. Having carefully examined the orders of the authorities below and the orders passed in the case of AOP by the Tribunal (copies placed on records), we find that once entire issue on additions made on protective basis in the hands of the assessee, are open before the AO in set aside proceedings in the case of AOP, the assessment on protective basis are not sustainable. We therefore set aside the order of the CIT(A) and restore the matter to the AO to take appropriate view in the assesseees' case while computing the

assessment in the hands of AOP. Accordingly, the appeals of the revenue are allowed for statistical purposes.

5. In the result, the appeals of the assesseees are partly allowed.

Pronounced in the open court on this 24th day of March, 2017.

Sd/-

(INTURI RAMA RAO)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore.

Dated: 24th March, 2017.

/NS/

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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.