IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'C', BENGALURU

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

Sl. No	ITA Nos.	Appellant	Respondent	Asst. Year
1-7	ITA Nos. 273 to 279/Bang/2010	Disrupted BOI consisting of Shri. Dasappa, Shri. D. Ramachandrappa and Shri. D. Jayaraj PAN : ABMPD9168M		1986-87 To 1992-93
8-14	280/Bang/2010 To 286/Bang/2010	Disrupted BOI consisting of Shri. D. Ramachandrappa, Smt. D. Indrani and Smt. D. Meenakshi PAN : ABJPR9683E		1986-87 To 1992-93
15-21	287/Bang/2010 To 293/Bang/2010	Disrupted BOI consisting of Shri. D. Ramachandrappa, Smt. D. Indrani and Smt. D. Meenakshi PAN : ABJPR9683E		1986-87 To 1992-93
22-28	ITA nos.294 to 300/Bang/2010	Disrupted BOI consisting of Shri. D. Ramachandrappa, Shri. D. Ravikumar and Shri. D. Ravikumar PAN : ABJPR9683E		1986-87 To 1992-93
29-35	ITA Nos.301 to 307/Bang/2010	Disrupted BOI consisting of Shri. D. Jayaraj, Shri. D. Vijayakumar and Shri. D. Somashekhar PAN : AEUPS7762M		1986-87 to 1992-93

36-42	ITA Nos.308 to 314/Bang/2010	Disrupted BOI consisting of D. Jayaraj, Smt. R. Sarojamma, R. Somashekar PAN : ABLPJ3394G		1986-87 To 1992-93

43-49	ITA Nos. 315 to 321/Bang/2010	Disrupted BOI consisting of Shri. D. Jayaraj, Smt. R. Sarojamma and Smt. Lakshmidevi PAN : ABLPJ3394C		1986-87 to 1992-93

50-56	ITA Nos.322 to 328/Bang/2010	Disrupted BOI consisting of Smt. R. Lakshmidevi, D. Ravikumar, Smt. D. Indrani PAN : ABMPD9168M		1986-87 To 1992-93

57-63	ITA Nos.329 To 335/Bang/2010	Disrupted BOI consisting of Smt. R. Sarojamma, Smt. D. Meenakshi, Smt. D. Indrani PAN : AJPPS2187J		1986-87 To 1992-93

64-70	ITA Nos.336 To 342/Bang/2010	Disrupted BOI consist of Sri D. Vijaya Kumar, D. Ravi Kumar, D. Dasappa, PAN : AAUPB0644B		1986-87 To 1992-93

AOPs

71 To 74	68/Bang/2003 To 71/Bang/2003	AOP consisting of Smt. D. Lakshmidevi, Shri. D. Ravikumar and Smt. D. Indrani PAN : GIR No.A-699		1989-90 To 1992-93

75 To 78	72/Bang/2003 To 75/Bang/2003	AOP consisting of Smt. Sarojamma, Smt. D. Meenakshi and Smt. D.		1989-90 To 1992-93

		Indrani PAN : GIR No.A-706		
79 To 82	76/Bang/2003 To 79/Bang/2003	AOP consisting of Shri. D. Dasappa, Shri. D. Ramachandrappa and Shri. D. Jayaraj PAN : GIR No.A-708		1989-90 To 1992-93
83	80/Bang/2003	AOP consisting of Shri. D. Ramachandrappa, Smt. D. Indrani and Smt. D. Meenakshi PAN : GIR No.A-707		1989-90
84 To 90	ITA Nos.81 to 87/Bang/2003	AOP consisting of Shri. D. Ramachandrappa, Smt. D. Indrani and Smt. D. Meenakshi PAN : GIR No.A-707		1989-90 to 1992-93
91-94	ITA Nos.88 to 91/Bang/2003	AOP consisting of Shri. D. Ramachandrappa, SHRI. D. Ravindranath and Shri. D. Vijayakumar PAN : GIR No.A-702		1989-90 To 1992-93
95 To 98	92/Bang/2003 To 95/Bang/2003	AOP consisting of Shri. D. Jayaraj, Shri. D. Vijayakumar and Shri. D. Somashekhar PAN : GIR No.A-703		1989-90 To 1992-93
99 To	96/Bang/2003 To	AOP consisting of Shri. D. Jayaraj, Smt. D. Sarojamma		1989-90 To

102	99/Bang/2003	and Shri. Somashekhar PAN : GIR No.A-704		1992-93

103 To 106	100/Bang/2003 T0 103/Bang/2003	AOP consisting of Shri. D. Jayaraj, Smt. D. Sarojamma and Smt. Lakshmidevi PAN : GIR No.A-701		1989-90 To 1992-93

107 To 109	1359/Bang/2002 To 1361/Bang/2002	AOP consisting of Shri. D. Vijayakumar, Shri. D. Ravindranath and Shri. D. Dasappa PAN : GIR No.A-705		1990-91 to 1992-93

Assessee by : Shri. K. G. Adarsha, CA
Revenue by : Shri. G. Kamaladhar, Standing Counsel

Heard on : 10.11.2017
Pronounced on : 06.12.2017

O R D E R

PER BENCH :

These are in all 109 appeals belonging to the Dasappa Group. Out of the 109 appeals, Sl.nos.1 to 70 in the cause- title above pertain to the BOI group and the remaining appeals 71 to 109 in the cause title above pertain to AOP group. Since the issues involved are common and are in respect of a group and also arise out of the common order passed by the CIT(A), dt.30/11.2009, for the assessment years 1986-87 to 1992-93, all

these appeals are combined and a common order is passed for the sake of brevity and convenience.

ITA Nos.273 to 335/Bang/2010 – BOI appeals :

1. As the facts are common and the issue involved is also common, we are referring to facts of one case, namely, BOI consisting of D. Dasappa, D. Ramachandrappa and D. Jairaj out of **ITA Nos. 273 to 335/ Bang/2010 .**

2. The assessee is a BOI consisting of D. Dasappa. D. Ramachandrappa and D. Jaiaraj. The assessee has instituted the appeal for A. Y. 1986-87 before the CIT (A) against the order passed u/s.143(3) R.W.S. 147 and 260A of the Act. As per the claim of the assessee, there is no dispute either about the constitution of the BOI up to asst. Years 1983-84 and 1985-86. However, it is the case of the assessee that the BOI came to be dissolved on 12.09.1993. On the said date, the BOI was dissolved and the fact of dissolution of BOI was communicated to the erstwhile AO by letter dt.28.09.1993 filed on 04.10.1993. It is the case of the assessee that as the BOI was dissolved on 12.09.1993 and the intimation was given to the AO having jurisdiction over the assessee

3. The assessee filed the return of income for the year under consideration on 30.09.1993 reporting nil income. The assessee had shown an exemption income in part –IV of the return,

consisting of gift and presentation received, good will and agricultural income. The AO issued a notice u/s.148 of the Act on 28.03.1996 and upon the receipt of the notice u/s.148 of the Act, the assessee before us has submitted a letter stating that the proceedings initiated u/s.147 was bad in law and further submitted that the return of income filed earlier be treated as return filed in response to notice u/s.148.

4. The AO concluded the assessment u/s.143(3) r.w.s 147 on 05.03.1998 making an addition in respect of the exemption income by the assessee. The AO has assessed the income of the assessee in respect of each assessment year as follows :

Sl. No	Appeal no.	Name of the assessee	A. Y	Income assessed Rs.
1	ITA.273/B/2010	Disrupted BOI of D. Dasappa, D. Ramachandrappa & D. Jairaj	1986-87	7,73,860
2	ITA.274/B/2010	-do-	1987-88	14,41,425
3	ITA.275/B/2010	-do-	1988-89	28,08,925
4	ITA.276/B/2010	-do-	1989-90	39,34,002
5	ITA.277/B/2010	-do-	1990-91	28,54,534
6	ITA.278/B/2010	-do-	1991-92	80,68,600
7	ITA.279/B/2010	-do-	1992-93	22,39,471
8	ITA.280/B/2010	Disrupted BOI consisting of Shri. D.Ramachandrappa, Smt. D. Indrani and Smt. D. Meenakshi PAN : ABJPR9683E	1986-87	8,62,911

9	ITA.281/B/2010	-do-	1987-88	13,98,925
10	ITA.282/B/2010	-do-	1988-89	26,88,925
11	ITA.283/B/2010	-do-	1989-90	39,34,002
12	ITA.284/B/2010	-do-	1990-91	28,78,484
13	ITA.285/B/2010	-do-	1991-92	72,92,500
14	ITA.286/B/2010	-do-	1992-93	16,38,471
15	ITA.287/B/2010	Disrupted BOI consisting of Shri. D. Ramachandrappa, Smt. D. Indrani and Smt. D. Meenakshi PAN : ABJPR9683E	1986-87	8,50,860
16	ITA.288/B/2010	-do-	1987-88	14,18,920
17	ITA.289/B/2010	-do-	1988-89	26,93,930
18	ITA.290/B/2010	-do-	1989-90	36,66,102
19	ITA.291/B/2010	-do-	1990-91	28,79,484
20	ITA.292/B/2010	-do-	1991-92	58,13,100
21	ITA.293/B/2010	-do-	1992-93	17,39,420
22	ITA.294/B/2010	Disrupted BOI consisting of Shri. D. Ramachandrappa, Shri. D. Ravikumar and Shri. D. Ravikumar PAN : ABJPR9683E	1986-87	8,43,861
23	ITA.295/B/2010	-do-	1987-88	14,23,925
24	ITA.296/B/2010	-do-	1988-89	27,58,925
25	ITA.297/B/2010	-do-	1989-90	37,03,002
26	ITA.298/B/2010	-do-	1990-91	27,43,484
27	ITA.299/B/2010	-do-	1991-92	71,59,545
28	ITA.300/B/2010	-do-	1992-93	21,38,971
29	ITA.301/B/2010	Disrupted BOI consisting of Shri. D. Jayaraj, Shri. D. Vijayakumar and Shri.	1986-87	8,48,861

		D. Somashekhar PAN : AEUPS7762M		
30	ITA.302/B/2010	-do-	1987-88	14,85,925
31	ITA.303/B/2010	-do-	1988-89	28,63,925
32	ITA.304/B/2010	-do-	1989-90	39,75,102
33	ITA.305/B/2010	-do-	1990-91	35,78,534
34	ITA.306/B/2010	-do-	1991-92	76,94,550
35	ITA.307/B/2010	-do-	1992-93	20,38,471
36	ITA.308/B/2010	Disrupted BOI consisting of D. Jayaraj, Smt. R. Sarojamma, R. Somashekar PAN : ABLPJ3394G	1986-87	8,33,861
37	ITA.309/B/2010	-do-	1987-88	14,70,925
38	ITA.310/B/2010	-do-	1988-89	28,63,925
39	ITA.311/B/2010	-do-	1989-90	39,62,102
40	ITA.312/B/2010	-do-	1990-91	28,73,530
41	ITA.313/B/2010	-do-	1991-92	64,99,204
42	ITA.314/B/2010	-do-	1992-93	19,38,970
43	ITA.315/B/2010	Disrupted BOI consisting of Smt. R. Lakshmidevi, D. Ravikumar, Smt. D. Indrani PAN :ABMPD9168M	1986-87	8,38,802
44	ITA.316/B/2010	-do-	1987-88	14,75,925
45	ITA.317/B/2010	-do-	1988-89	29,13,930
46	ITA.318/B/2010	-do-	1989-90	39,14,002
47	ITA.319/B/2010	-do-	1990-91	32,99,534
48	ITA.320/B/2010	-do-	1991-92	60,05,600
49	ITA.321/B/2010	-do-	1992-93	22,39,071
50	ITA.322/B/2010	Disrupted BOI	1986-87	8,50,912

		consisting of Smt. R. Lakshmidevi, D. Ravikumar, Smt. D. Indrani PAN:AJPPS2187J		
51	ITA.323/B/2010	-do-	1987-88	14,27,926
52	ITA.324/B/2010	-do-	1988-89	27,68,426
53	ITA.325/B/2010	-do-	1989-90	37,87,100
54	ITA.326/B/2010	-do-	1990-91	29,24,480
55	ITA.327/B/2010	-do-	1991-92	67,19,550
56	ITA.328/B/2010	-do-	1992-93	20,88,921
57	ITA.329/B/2010	Disrupted BOI consisting of Smt. R. Sarojamma, Smt. D. Meenakshi, Smt. D. Indrani PAN : AJPPS2187J	1986-87	8,50,912
58	ITA.323/B/2010	-do-	1987-88	14,27,926
59	ITA.324/B/2010	-do-	1988-89	27,68,426
60	ITA.325/B/2010	-do-	1989-90	37,87,100
61	ITA.326/B/2010	-do-	1990-91	29,24,480
62	ITA.327/B/2010	-do-	1991-92	67,19,550
63	ITA.328/B/2010	-do-	1992-93	20,88,921
64	ITA.336/B/2010	Disrupted BOI consist of Sri D. Vijaya Kumar, D. Ravi Kumar, D. Dasappa, PAN : AAUPB0644B	1986-87	8,72,911
65	ITA.337/B/2010	-do-	1987-88	15,38,425
66	ITA.338/B/2010	-do-	1988-89	29,69,425
67	ITA.339/B/2010	-do-	1989-90	40,63,000
68	ITA.340/B/2010	-do-	1990-91	33,74,484
69	ITA.341/B/2010	-do-	1991-92	54,17,945
70	ITA.342/B/2010	-do-	1992-93	20,88,921

Assessee being aggrieved by the order passed by the AO filed an appeal before the CIT (A)

5. Before the CIT (A) assessee failed to get any relief. Consequentially, the assessee preferred appeal before the ITAT, challenging the validity of the assessment on the BOI of D. Dasappa, D. Ramachandrappa and D. Jayaraj.

6. The Tribunal, vide decision dated 02.03.2001 in ITA no 622 to 647 in para 22 and 23 held as under :

> *22. The ld. Representative Shri Venkatesan has also submitted that the issue of notices under 148 read with 147 was not correct. He has submitted that the assessee's were present before the AO and therefore, making assessments under sec.144 was also not correct. If the assessee's were disrupted, then the question of remaining present before the AO does not arise as they are not in existence. They could not also have been represented. The facts are contrary, particularly on perusal of the CIT(A)'s order.*
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> **23.** *It has become necessary to consider one more point in view of the arguments of the ld. Representative for the assessee, Shri S.Venkatesan that the assessments made by the AO are bad in law and void ab-initio and they should be cancelled. The assessees have filed their returns of income showing different incomes for different assessment years. The returns of income for all the assessment years under appeals viz., A.Ys. 89-90, 90-91 and 91-92 are furnished by the CIT(A) in a tabular form by way of Annexure, which has become part of the order of the CIT(A). If the ld. Representative's contention is accepted that the assessments should be cancelled, it would amount that even the assessments cannot be made on the returned income also. This being, incorrect cannot be accepted. The returns are filed for making assessment on the returned incomes subject*

to acceptance by the Assessing Officer. The Assessing Officer is at liberty to make the additions and accordingly the additions of goodwill and gifts are made herein.

Besides that the Tribunal had also decided the other grounds partly in favour of the assessee and partly in favour of the Revenue.

7. Similarly, the Tribunal vide its order dt.20.07.2001 by a common order in ITA Nos.632 to 675/Bang/1998 in paras 8 to 19, held as under:

8. These appeals of the assessees are covered on some issues in favour of the assessees and on some issues in favour of the Department by the common order of the Tribunal in ITA Nos.622 to 672/Bang/1997 dated 18.03.2001 in the case of the above assessees and the following issues arise out of these appeals :

Sl. No.	Issues	Assessee	Asst. Years
1.	Validity of assessment framed on the dissolved BOI's	All assessees	1986-87 to 92-93
2	Validity of the re-opening of the assesments	All assessees	1986-87 to 92-93
3.	Validity of ex-parte assessments	All assessees	1986-87 to 92-93
4	Treatment of goodwill as taxable receipts	All assessees	1986-87 to 92-93
5.	Treatment of gifts and presentation as taxable receipts	All assessees	1986-87 to 92-93
6.	Addition towards agricultural income	All assessees	1986-87 to 92-93
7.	Int. u/s.139(4) & 217	All assessees	1986-87 to 92-93
8.	Int. u/s.234A, B & C	All assessees	1986-87 to 92-93

9. Some of these issues are covered in favour of the Department and some issues are covered in favour of the assessee by the aforesaid order of the Tribunal. Shri S.Venkatesan, learned AR for the assessee and Shri Chadaga, learned DR

appeared on behalf of the Department. We have heard the rival submissions and perused the evidence on record and also gone through the decisions relied before us.

10. We have perused the aforesaid order of the Tribunal dated 18-3-2001. These assessees got disrupted on 12-9-1993. The assessees relied on the decision of the Supreme Court in the case of State of Punjab v. Jallandar Vegetable Syndicate reported in 15 STC 326 and that of the Bombay High Court in the case of Ellis C. Reid v. CIT reported in 5 STC 100 for the proposition that in the absence of assessable person on the date of assessment, the assessment made on such person is bad in law. This decision of the Bombay High Court in the case of Ellis Reid (supra) has been referred by the Hon'ble High Court of Karnataka in the case of G.E. Narayana (193 ITR 41) wherein it was observed at page 47 as under:

> *"The forerunner to this principle is found in the decision of the Bombay High Court in Ellis C Reid V cit AIR 1931 Bom.333 (1930) 5 STC 100, wherein the Bombay High Court held that, when a person died after the commencement of the assessment year but before his income for the relevant accounting year was assessed, his executor was not liable to pay the tax. After this decision, section 24B was introduced in the earlier Income-tax Act, 1922 (similar to the present section 159). That the existence of the assessee at the time of the assessment order is an absolute necessity is a matter which has been recognised in all these decisions and if the assessee is not in existence, there should be a specific provision to assess the said income which was liable to be taxed under the provisions of the Income-tax Act. The same logic governs the Wealth lax Act also"*

The above passage of the Hon'ble High Court of Karnataka was reiterated in the later decision of the Hon'ble High court in T.Govindappa Setty v. ITO (231 ITR 892 at page 902). Therefore, in the absence of any provision to assess a dissolved BOI, unlike in the case of a person who dies without leaving a Will sec.159(1), by leaving a Will -

sec.171, disrupted AOP - sec.177, company under liquidation - sec. 178 and dissolved firm— sec. 189, the assessments made on the assessees required to be annulled.

11. However, the Tribunal noted the arguments of the assessee and held that the argument of the assessees relying on the decision of T Govindappa Setty (supra) is on the point of disruption of the HUF and in these appeals, there was no disruption of HUF and that therefore, the facts of the assessees' cases. are not on par with the facts before the Hon'ble High Court. The Tribunal has held in para 21 of the order (supra) that the BOI was in existence till 12-9-1993 when it was disrupted and the capital was distributed among the members and intimation of disruption was given to the Department and the assessment years involved in these appeals are prior to the date of disruption, the decision of the Hon'ble High Court in T.Govindappa Setty (supra) does not in any way help the assessee.

12. Shri S.Venkatesan, argued that although the 'Ols are not HUF, the principle ennunciated by the Hon'ble Supreme Court in the case of Jallandar Vegetàble Syndicate (supra) and the Bombay High Court in Ellis Reid (supra) relied on by the Hon'ble High Court of Karnataka in T.Govindappa & Sons (supra) is that the assessable entity must be in existence before the assessment is made. Therefore, it was contended that the order of the Tribunal is per incuriam on this point as it is not in conformity with the ratio of the Hon'ble Supreme Court in Jallandar Vegetable Syndicate (supra), Bombay High Court in Ellis Reid (supra) and Karnalaka High Court in T.Govindappa Setty (supra) and in that view of the mater, the point should be resolved in favour of the assessee. Normally the Tribunal should follow the order of another Bench on the same facts unless, after pronouncing decision by the Tribunal, there is an alteration in law brought about by an amendment of the law or by the decision of the High Court or Supreme Court. The earlier Bench considered

these very decisions cited by the Id. AR and came to a certain conscious decision and therefore, the decision of the earlier Bench should be followed by this Bench for judicial consistency. Therefore, following the earlier order of the Tribunal, we uphold the validity of the assessments made on the disrupted BOIs.

13. The next issue is about the validity of the reopening. It is contended on behalf of the assessees that the re-opening of the assessments is bad in law. Again, the validity of the re-opening was upheld by the Tribunal in the aforesaid order. It was contended by Shri Venkatesan that although the Tribunal upheld the validity of the reopening reasons that are mandatorily required to be recorded were not produced before the Tribunal during the course of hearing of the assessees Accordingly, we directed the learned Departmental Representative to produce the reasons recorded for the years under appeal. The learned Departmental Representative produced a photostat copy of the order sheet where the reasons recorded are as under:

> *'The assessees have izow filed returns of income showing substantial receipts from 'gifts and Presentations' and 'Goodwill without furnishing any details like name and addresses of the donors, etc. I believe these amounts are actually the assessees' income which is to be brought to tax. Therefore, notice u/s. 148 r.w.s. 147 may be issued."*

14. Shri Venkatesan contended that the reasons recorded by the AO do not reveal the name of the assessee in whose case the reasons have been recorded, date of recording the reasons, designation of the officer recording the reasons and assessment year to which the recorded reasons relate are not mentioned. At this stage, we asked the learned Departmental Representative as to whether any sanction, as contemplated u/s.151 for issue of notice uls.148 of the Act, after 4 years from the end of the assessment year, has been obtained before issue of notice. The learned Departmental Representative pleaded for

some time and produced a letter addressed to the ACIT, Central Circle-IV, Bangalore, dated 28-3-1996 where sanction was given by the DCIT to re-open the assessments for assessment years 1985-86 to 1989-90 in the case of income-tax and 1985-86 to 1990-91 in the case of wealth-tax He also produced a note on BOIs submitted by the Assessing Officer d.27-3-1996 to the DCIT seeking approval. In this letter, he only delineated the facts of the case and the following are some of the extracts:

> *"These amounts of cash had apparently been shown to have been available with the BOIs with the intention of bringing such cash in the hands of individual members of the Dasappa group and certain firms as amounts received from the HOIs. We had made an attempt to assess such cash credits in the concerned individual/firms hands- substantially and the,, protectively in the hands of the ROTs. Accordingly, assessment for AY 92-93 was made in the hands of the BOIs on 10.3.96 The assessees took up the issue before the CJT(a) and CIT(a) deleted the additions made in the hands of the individual/firms and set aside the assessments in the names of the BOIs to make them afresh. While doing so, the CIT(A) has mentioned that the assessability of the amounts brought into the hands of the individual firms through the media of BOIs can only be considered in the hands of the BOIs. We are in appeal before the ITAT against the CIT(A) 's orders in the cases of the individuals and firms as well as in the cases of the BOIs.*
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> *In respect of some of the assessment years namely A. Ys 89-90, 90−91 and 1991-92 in the hands of the BOIs, notices u/s. 148 have already been issued. Some of these assessments are time barring by 31/03/96. Some of the remaining assessments are time-barring 31/03/97. We have not however, issued notices u/s. 148 in respect of the other years.*

From the facts gathered in the course of the assessment proceedings, it was considered that the amount brought into individual/firms hands through the media of BOIs are assessable as cash credits. The BOIs also could not establish that how they had earned substantial amount in the form of gifts and goodwill. However, the CIT(A) has decided otherwise.

In the light of the above facts, I have reasons to believe that the income assessable for the assessment years 85-86 to 95-96 has escaped assessment in respect of the 10 BOIs referred to above, except the cases in respect of which proceedings u/s. 147 have already been initiated for the A. Ys. 1989-90, 1990-91, 1991-92 and the A. Y. 1992-93 in respect of which returns have already been filed and actions taken thereon.

On the basis of the facts in the returns of income filed by these BOIs, they are also liable to wealth-lax in respect of assessments year 85-86 and onwards. No such returns have been filed. In these circumstances, I have also reason to believe that the net wealth assessable in the hands of these BOIs has escaped assessment for A. Ys 85-86 to 95-96.

I, therefore, propose to initiate proceedings for assessment by issue Of notice u/s. 148 of the I. T Act, in the cases of all the 10 BOIs for A. Ys 85-86 to 94-95 except for the A. Ys 89-90, 90-91 and 1991-92 in respect of which notices have already 'been filed As far as A. Y. 95-96 is concerned, I propose to initiate proceedings by issue of notice u/s. 142(1) of the I. T Act."

15. Shri Chadaga, learned Departmental Representative contended that the above should be considered as reasons recorded as against the reasons recorded and produced before us earlier, which we have

mentioned above. Shri Venkatesan, on the other hand, contended that no reasons have been recorded and what was so recorded do not bear the date, name of the assessees, assessment years, designation of the officer and what are the material on the basis of which the officer was induced, to have the belief that income has escaped assessment. Even in the Notes to the DCIT seeking for approval, he has only set out the. facts and has not recorded the reasons as he intended to make a protective assessment and as such the reasons to believe are not bona fide. At any rate, having regard to the ratio of the decision of the Karnataka High Court in Vijayalakshmi Industries reported in 155 ITR 748, the Notes prepared for the higher authority contemporaneously cannot be elevated to the mandatory requirement of recording the reasons.

16. Respectfully following the decision of the Hon'ble High Court in the case of Vijayalakshmi Industries (supra), we hold that the impugned assessments made uls.47 are without jurisdiction as the mandatory requirements of sec. t43(2) have not been complied with- Even if a different view is taken, then also the reasons recorded by the Assessing Officer which are produced initially read with the. letters to the DCIT seeking approval do not make any reference to any valid reason that has led the Assessing Officer t& entertain a bona fide belief that the income has escaped assessment. As stated earlier, the Assessing Officer only wanted to make a protective. assessment.

17. For these reasons also, we hold that the reasons recorded are so vague and irrelevant that the assessment cannot be sustained from this angle also. Accordingly, we cancel the assessments so framed.

18. In so far as the assessment year 1992-93 is concerned, the assessments have been set aside by the CIT(A) and when the assessment is thus set aside and pending, the Assessing Officer has issued a notice u/s. 148 of the Act. Therefore, the present assessments made uls.148 of the Act are -also-bad in law.

19. Although, we have cancelled the assessment, we

proceed to dispose of the other issues on merits in case the appeals are revived in further appeal. The learned Departmental Representative tried to contest that the finding of the Tribunal in the above order about the treatment of goodwill, gifts and presentations and additions towards agricultural income which are covered in favour of the assessee should be reviewed by the Tribunal in these appeals. We have perused the earlier order of the Tribunal in the case of the assessees and considered the argument of the learned Departmental Representative. It is not in dispute that the Tribunal has considered all the facts, evidence and has also applied the principle laid down by the Supreme Court in the case of Noorjahan reported in 237 ITR 540. Therefore, we agree with the findings of the Tribunal which are qualitatively unexceptional for these years also and we uphold the contentions of the assessees in this regard as the facts are similar. We accept the appeals of the assessees on these points and are accordingly disposed of.

8. Feeling aggrieved by the order passed by the Tribunal, the Revenue filed an appeal before the jurisdictional High Court. The Hon'ble High Court vide its judgment dt.06.11.2007, held as under :

12. Having heard the learned counsel appearing for both the parties, we are of the opinion that since the Assessing Officer has not considered the preliminary point raised by the assessee in regard to jurisdiction and in the light of the judgments relied upon by the counsel for the revenue, it is open for the Assessing Officer to reconsider the matter in its entirety giving an opportunity to the assessee.

13. Therefore, this appeal is allowed. Without answering the question of law, as the matter has to be reconsidered by the Assessing Officer fresh in accordance with the law and the order of the Income Tax Appellate Tribunal, Bangalore dated 12.3.2001, the order passed by the Commissioner of Income

Tax (Appeals) dated 23.5.1997 and the original order passed by the 28.3.1996 Assessing Authority are set aside.

9. During the pendency of the proceedings before the Tribunal in respect of appeal in ITA Nos.632 to 672/Bang/1998, the AO again issued notice u/s.148, dt.30.03.2000, considering the assessee as AOP. After receiving the notices, the replies were given on behalf of the assessee, on 23.02.2002 challenging the reopening of the assessment and further the assessee had also filed the return under protest. It was the case of the assessee that there was no AOP in existence at all and the BOI was in existence until 12.09.1993 and thereafter it was disrupted. Besides that the assessee had also raised an issue of validity of reopening. After receiving the reply of the assessee, the AO has passed the assessment order making addition in the hands of AOP as protective assessment. The order of AO was challenged before the CIT (A) and the CIT (A) had confirmed the order passed by the AO. Feeling aggrieved by the order passed by the CIT (A), the assessee filed an appeal before the Tribunal.

10. The Tribunal vide order dt.03.04.2007 in ITA No.68 to 103/2003 and 1359 to 1361/2002, has allowed the appeals of the assessee. In the said order, it was held by the Tribunal in Para 2.11 to 2.14 as under :

2.11 After considering the submissions of both the parties, it is clear that on the basis of the decided law, one has to consider the justification for the reopening on the basis of reasons recorded, It has been held in the following case laws that validity of notice is to be judged on the basis of material existing prior to issue of notices:-

1. Chunnilal Surajmal v CIT (160 ITR 141) (Patna)
2. *ITO v Textile Mills Agents P. Ltd. (130 ITR 733) (Cal.)*

Even the jurisdictional High Court in the case of Vijayalakshmi d Industries v ITO (155 ITR 748) has held that reopening is to be considered as valid on the basis of the reasons recorded and note, if any, available in the assessment record cannot help in holding that reopening is valid on the basis of such note. From the assessment order, ii is clear that the Assessing Officer has reopened the assessment on the basis of returns filed in the status of B01. The Assessing Officer has concluded the assessment on the basis of information available in the returns of the 801 and this fact suggests that no information was available with the Assessing Officer. Only change of opinion by the Assessing Officer is that the receipts shown as goodwill and gifts and presentation in the returns of 801 are to be assessed in the hands of the AOP. There should be some material before the Assessing Officer to hold the existence of AOP or material to show that such persons have come together to start a joint venture of project for the purpose of producing income, profit and gains. In the reasons recorded, the Assessing Officer has not mentioned any such information. From the facts available in the assessment order, it is clear, that the Assessing Officer has formed his opinion on the basis of the fact, which were earlier available at the time of completion of assessment in the case of 801.

2.12 Hence, the reasons recorded do not have any nexus to say that the Assessing Officer has reason to believe that there was AOP in existence,

2.13 As already pointed out, the assessments were reopened when the appellate proceedings were pending before the ITAT. During the course of appellate proceedings in the case of BOI, the learned AP has pointed out that the revenue has issued notices u/s 148. At that relevant time, the revenue has not made any statement to the fact that such, income may be

excluded in the hands of BOI as revenue is of the opinion that the same is taxable in the hands of AOP. No arguments were made that such addition may be considered protective in the hands of B01. The Tribunal has considered issuing of notice u/s 148 in the case of B01 and concluded while deciding the appeal of B01 that receipts in the nature of goodwill is capital receipts. Similarly, receipts in the nature of gifts and presentation are also not taxable. Once such finding has been arrived that such receipts are not taxable but belongs to B01 by the Tribunal, this Bench has no power to review earlier order of the Tribunal. It has been held in the following case laws that the Tribunal has no power to review:-

1. *State Bank of Bikaner and Jaipur v CIT (191 CTR 344)(Raj.)*
2. *Schenectady Bench India Ltd. v bCIT (91 ITb 23) (Third Member)*
3. *ACIT v Saurashtra Kutch Stock Exchange Ltd. (262 ITR 146) (Guj.)*

2.14 Once a finding has been arrived by the Tribunal, the same finding cannot be reversed while hearing appeal of another assessee as it will tantamount to review of earlier order. Hence, also on this ground, it cannot be held that receipts in the nature of goodwill or gift and presentation belong to AOP. The reopening of assessment on such basis cannot be justified, as the Assessing Officer has no jurisdiction to review the order of the Tribunal. Hence, it is held that the reopening is not valid in the eyes of law.

11. Again at para.4 the Tribunal held as under :

4. On the other hand, the learned AR has relied on the decision of the Apex Court in the case of Ganga Saran & Sons P. Ltd v. ITO (130 ITR 1). In this case, the Apex Court has held that the words "has reason to believe" are stronger than the words "is satisfied". The Hon'ble Apex

Court held that the court cannot investigate into the adequacy or sufficiency of the reasons which have weighed with the ITO in coming to the belief, but the court can certainly examine whether the reasons are relevant and have a bearing on the matters in regard to which the Assessing Officer is required to entertain the belief before he can issue notice u/s.147. If there is no rational or intelligible nexus between the reasons and the belief, then the conclusion would be inescapable that the Assessing Officer could not have on undisputed facts discussed in the order and also taking note of the circumstances of the case, we hold that the reopening of the assessments are bad in law. It is ordered accordingly.

12. Besides that the Tribunal had also decided the other grounds on merit. Feeling aggrieved by the order, the Revenue filed an appeal before the Hon'ble High Court. The Hon'ble High Court in ITA.865/2007, vide order dt.02.07.2010, had remanded all the appeals to the Tribunal with a following direction :

9. Having heard the learned counsel for both sides and on perusal of records, it is not in dispute that at the initial round of litigation there was a challenge made to the notices issued under section 148 of the Act to the assessees as 'BOI' and the said notices were challenged before the Appellate Authorities and thereafter, the matter was heard by this court and by order dated 6.11.2007 in ITA No. 197/2001 and other appeals, the matter was remanded to the Assessing Officer to give a finding on the question as to whether as on the date of issuance of notice under Section 148 of the Act, the "BOI" existed or not. It is also not in dispute that after the said remand, the matter is now pending before the Tribunal to consider the validity of the orders passed by the Assessing Officer as well as the Commissioner of Income Tax (Appeals) and the said appeals, we are informed, were filed on 8th March 2010. It is necessary to note that in respect of the very same assessees who according to the Assessing Officer were "BOI",

when the Assessing Officer had earlier issued notices under Section 148 by assigning certain reasons in the said notices, that those individual assessees had combined themselves together in various combinations for the purpose of earning income and that there was an association of persons and therefore. once again notices were issued to the said individuals as forming an "AOP". The question as to whether the reasons assigned by the Assessing Officer to reopen the assessment under Section 148, has been contested by the counsel for the respondent by contending that the Tribunal was justified in holding that there was no valid reasons assigned and it Is a mere change of opinion and the proceedings initiated against the assessees in the status of "AOP" would amount to review of the earlier order passed in the status of "BOl". Be that as it may, we having heard the learned cousnel for both sides and on perusal of material on record. particularly, the order passed by the Tribunal and when in fact that the appeals with regard to the existence of "BOl" as on the date of Issuance of earlier notices under Section 148 is under consideration before the Tribunal, we deem It proper that these appeals would have to be heard along with those appeals filed by the assessees pursuant to the remand made by this court on 6.11.2007.

10. We say so for more than one reason. It is necessary to note that it is in respect of the very same assessees that the controversy regarding the existence of "BOl" as on the date of issuance of earlier notices under Section 148 is pending before the Tribunal and it is in respect of the very same individuals as to whether they had constituted themselves as "AOP" in various combinations has been the subject matter of the reopening by issuance of notices under Section 148 of the Act, since the assessees who had constituted themselves as "BOl" are the very same persons who, according to the revenue had come together as "AOP". It is in respect of the receipts which is the subject matter of the income of the "BOl" as well as the same being the subject matter of receipts by "AOP", we think that there has to be

simultaneous consideration of these issues by the Tribunal where the matters with regard to the "BOl" are now pending.

11. We have also to note that with regard to certain findings given by the Tribunal, at the first instance, the Tribunal had stated that any reopening of the assessment by the Assessing Officer would amount to a virtual review of his own order which has merged with the orders of Commissioner of Income Tax (Appeals) and that the Assessing Officer had no power to review his own assessment and therefore, the Assessing Officer could not have issued notices under section 148 of the Act. Having said that, the Tribunal further went into the merit' of the question as to whether the notices issued were justified or not and has given its reasoning for holding that there was no evidence that the body of individuals had come together as an association of persons. This conclusion reached by the Tribunal is not based with reference to the records. Further, the Tribunal has come to the conclusion on the basis of case law cited and as to how the said case law were applicable to the facts of the present case, without examining the evidence on record or the basis on which, the Assessing Officer had issued the notices under Section 14. The Tribunal while going through the reasons recorded by the Assessing Officer has stated that the said reasons do not record as to how the members of "AOP" had come together to earn income by collecting goodwill /royalty from other excise contractors for not bidding in the excise auctions and enabling those contractors to succeed in the auction and that there is no information on record, to show as to how the Assessing Officer had come to the conclusion that the assessees had joined together to earn income. Having said that and by referring to the trust deed dated 15.4.1980 held that the "BOl" had come into existence on account of certain properties for which beneficial interest was entrusted and that the "BOI" had not voluntarily joined together. However, while considering the receipts of income, the Tribunal straightaway held that the members had not joined together

voluntarily and therefore, the income cannot be taxed in the hands of "AOP. In our view there is no basis for arriving such a categorical conclusion. When the Assessing Officer has mentioned in the reasons recorded that the members of the family had come together to earn income by participating in excise auction or alternatively to earn income by collecting goodwill or royalty from other excise contractors for not bidding any excise auction and enabling other contractors to succeed in the auction, the Commissioner of Income Tax (Appeals) had held that such an activity would amount to conscious activity of members coming together which according to the Commissioner of Income Tax (Appeals) justifies the group being assessed as ¯AOP" rather than "BOI". The Tribunal has also recorded that the Assessing Officer had not confronted to the assessees any material and therefore, the said material could not be used against the assessees. If that be so, then the Tribunal could not have straightaway concluded the matter on merits in favour of the assessees. Therefore, for the aforesaid reasons, we are of the considered view that these appeals have to be remanded to the Tribunal for reconsideration of the issues raised in these appeals along with the issues raised in the appeals filed by the assessees with regard to the 'BOI' and which are filed on 8th March 2010 and are pending before the Tribunal.

12. In view of the aforesaid remand, all the contentions which are raised in these appeals by both sides are left open. Both sides are at liberty to file the additional material which they propose to do so by way of paper book in support of their contention. Accordingly, the common impugned order dated 30th April 2007 passed by the Tribunal is set aside and the appeals filed by the revenue are allowed in part. Further, the Tribunal is directed to call for original records and after perusal of the same, proceed in accordance with law.

13. It may be pertinent to mention here that prior to passing of the above order in compliance with the direction of the Hon'ble High Court in ITA.197/2001; the AO had issued notice for reassessment to the assessee. In response to the notices in remand proceedings the assessee had filed objections before the AO vide its reply dt.09.12.2008, 15.12.2008 and 22.12.2008. It was submitted by the assessee in its reply that it had sought the reasons recorded in writing before issuance of notice u/s.148 vide earlier communication dt.30.04.1996 and again on 09.12.2008. On merit it was submitted that the BOI was dissolved w.e.f.12.09.1993 and therefore the proceedings cannot be initiated u/s.147 against a dissolved BOI. It was also submitted that the notice issued u/s.148 against the dissolved BOI is bad in law. However, the AO was not satisfied with the reply submitted by the assessee and had held that as per section 2(31)(v) of the Act , the association / body of individuals are kept in one group and therefore the provisions of Section 177(1) are applicable. In view of the mandate of Section 177, the assessment proceedings including the reassessment proceedings can be continued against the dissolved entity after 12.09.1993. Therefore it was held that the notice issued u/s.148 could not be said to be bad in law and were rightly served upon the dissolved BOI. With respect to other grounds raised by the assessee with regard to validity of notice u/s.148, the AO in his order in para 7 held that this issue was not raised at the time of original assessment in the year 1998 or before

the CIT (A). Therefore the argument of the assessee is not acceptable. Feeling aggrieved by the order passed by the AO in the second round of litigation, the assessee filed appeal before the CIT (A).

14. The CIT (A) upheld the order passed by the AO and in paras 4.1, 4.2, 4.7 and 4.10 upheld the validity of notice u/s.148 in the following manner :

> *4. VALIDITY OF ACTION U/s 147/148 OF THE ACT [Gr.No.2 to 5.1]*
> *4.1 At the time of the reassessment proceedings before the incumbent AC, the appellant again contested as bad in law the validity of the reopening of the assessment u/s 147 of the Act made by his predecessor through notices u/s 148 of the Act issued on 28/3/1996 for the assessment years under consideration on the same grounds that the appellant had, by then, ceased to be in existence due to the disruption of the Body of Individuals on 12/9/1993; that no income had escaped assessment; and that no assessment could be made on the disrupted BOI. The incumbent AC, quoting the provisions of section 2(31) of the Act and drawing attention to clause (v) thereof, explained in the reassessment order that the law makes no distinction between Body of Individuals and the Association of Persons and applies equally to both categories of assessees. Again quoting the provisions of section 177(1) of the Act, the AO clarified that assessment/reassessment proceedings could be validly initiated in respect of disrupted Body of Individuals as in the case of the appellant. The AO also pointed out that the appellant itself had filed the returns of income though belated on 30/9/1993 and had requested the AC to consider the same as having been filed in response to the*

notices issued u/s 148 of the Act consequent to the proceedings initiated u/s 147 of the Act. Holding thus, he went ahead and completed the reassessment proceedings. The correctness of such action on the part of the AO is questioned in the following grounds of appeal:

"2. The order of assessment passed by the learned A.O. on the disrupted BOI is bad in law and void ab-initio in as much as there is no provision to assess the disrupted BOI under the facts and in the circumstances of the appellant's case.

"2.1 The learned A.O. is not justified in holding that the appellant BOI could be assessed after its disruption by taking recourse to Sec. 177 of the Act under the facts and in the circumstances of the appellant's case. He failed to appreciate that sec. 177 of the Act did not apply to BOI and applied to AOP and there was a distinction between AOP and BOI and therefore the justification of the assessment by virtue of the provisions of sec. 177 of the Act was opposed to law and consequently, the impugned order passed deserves to be cancelled.

3, The Order of Assessment passed by the learned A.O. is barred by limitation and hence deserves to be cancelled.

4. Without prejudice to the above, the impugned order in the status of BOI is bad in law especially considering the fact that the department has assessed the appellant as an AOP and is prosecuting the matter in the status of AOP and consequently, the impugned assessment order in the status of BOI deserves to be cancelled.

5. Without prejudice to the above, the order of reassessment passed u/s 147 of the Act is bad in law in as much as the conditions precedent for reopening the assessment have not been complied with and consequently, the impugned order passed deserves to be cancelled.

5.1 Without prejudice to the above, the learned A.O ought to have appreciated that the objections of the appellant for reopening the assessment were valid and therefore, he ought to have dropped the proceedings initiated. The order

of assessment therefore is invalid and requires to be cancelled."

4.2 At para 4 of the Statement of Facts accompanying the Appeal Memo, the appellant states that the returns of income for the said assessment years came to be filed ***"UNDER PROTEST*** *in response to the illegal notice issued u/s 148 of the Act." It is also submitted at paras 9 and 10 therein that, when the appellant's representatives inspected the assessment records, it was found that the reasons for reopening the assessments were recorded only for the assessment years 1986-87 and 1991-92 and not for the other assessment years under appeal; that, even in respect of the reasons found recorded for the assessment years 1986-87 and 1991-92, objections were raised before the AO for reopening of the assessments but they were not taken cognisance of by the AO; that the incumbent AO's observation that the appellant should have raised such objections at the time of original assessments betrayed his ignorance of the fact that the appellant had as much raised such objections against the action of the AC initiated u/s 147/148 of the Act in respect of the original assessments; and that the Hon'ble ITAT had, in fact, declared the assessment orders for the assessment years 1987-88, 1988-89, 1989-90, 1990-91 and 1992-93 as invalid due to the AO's failure to record the reasons for issue of notice u/s 148 of the Act.*

4.7 Therefore, applying the said legal position now as stipulated in section 147/148 of the Act, it is not necessary for the AC to establish to the entire satisfaction of the appellant reasonable belief based on which the notice came to be issued u/s 148. In fact, the Hon'ble Supreme Court has gone to the extent of saying that confirmation of the belief by the AO is within the realm of subjective satisfaction and what all has to be satisfied is that there were enough materials to support the claim of

reasonable belief, which persuaded the AO to issue notice u/s 148 of the Act.

Feeling aggrieved by the order passed by the CIT (A), the assessee filed the present appeal before us.

15. At this stage as mentioned hereinabove, the Hon'ble High Court vide its subsequent direction vide order d.02.07.2010, had remanded the matters pertaining to AOP to the Tribunal with the direction to decide both the set of appeals together.

16. Firstly, we shall decide the grounds raised by the assessee in respect of order passed by the AO treating the assessee as BOI in ITA Nos 273-335/ Bang/2010. The common preliminary grounds no 4 and 4.1 raised by the assessee in all these appeals are as under :

4. Without prejudice to the above, the order of reassessment passed u/s.147 of the Act is bad in law in as much as the conditions precedent for reopening the assessment have not been complied with and consequently, the impugned order passed deserves to be cancelled.

4.1 With prejudice to the above, the authorities below ought to have appreciated that the objections of the appellant for reopening the assessment were valid and therefore, the proceedings initiated out to have been dropped.

17. The Ld. AR for the assessee had submitted that the assessee in its reply in the second round of litigation has submitted that

after the receipt of notice u/s.148, the assessee had filed the return of income under protest. The assessee had sought the reasons recorded in writing before issuance of notice u/s.148, based on which the assessee could raise the objection against the assumption of jurisdiction regarding the validity of original assessment proceedings. It was further submitted that in view of the Judgment of the Hon'ble Supreme Court in GKN Drive Shaft vs CIT [259 ITR 19], the AO is duty-bound to furnish the reasons recorded within reasonable time and thereafter the AO is bound to pass a speaking order in respect of validity of assumption of jurisdiction by the AO on the objections raised by the assessee. The assessee has sought the reasons vide latest communication dt.09.12.2008. However, the AO despite the request has not provided the reasons for reopening.

18. The Ld. DR during the course of argument has submitted that the reasons for issuance of notice u/s.148, are as under :

The assessees have now filed returns of Income showing substantial receipts from "Gifts and Presentations" and "Goodwill" without furnishing any details like name and addresses of the donors etc. I believe these amounts are actually the assessees' income which is to be brought to tax. Therefore, notice u/s.148 r.w.s.147 may be issued.

Expected
12-12/08

26/2/96.

Notice u/s 143(2) for A.Ys 89-90 & 90-91 fixing hg. on 6/3/96 put up for signature

Sum. ct. f (421) h.so.

Put up.

28/3/96

AO, DN, challan, 271(1)(c) notice put up for signature

A-27/P-15
95-96

P-11/Pg-29
95-96

A.Y.90-91

/-94.

BOI consisting of: Mr. D. Vijayakumar, D. Ravi Kumar &
D. Dasaiah

Reasons for issue of notice u/s.148.

Return declaring income of Rs. 16,41,80/- has been filed on 14-03-93 i.e. beyond time allowed u/s. 139. The P & L A/c. shows receipt of Rs. 23,18,000/- as goodwill and Rs. 11,40,000/- as gifts which have not been offered to tax. The details of the receipts have not been furnished. I, therefore, have reasons to believe that income chargeable to tax amounting to Rs. 33,58,000/- being receipts received during the year and not offered for taxation, have excaped assessment within the meaning of Sec.147 of the I.T.Act.

Issue notice u/s.148.

ACIT, CC.IV,
B'LORE.

31/1/94 Notice u/s. 148 put up.

D-S-10
Initials

12/2/94

22/7/94 Please see letter dt: 20/7/94 read in this case in response to the notice issued u/s.148. It is stated by the assessee that the return already filed on 31/3/93 may please be treated as return filed in on 9/7/94.
put up for orders.

Beside these two note sheets no other reasons recorded were produced before us .Ld. DR relies upon the order passed by the AO and the CIT (A).

19. We have heard the rival contentions and perused the record. It is beyond the pale of controversy in terms of the judgment of the Hon'ble Supreme Court in the matter of GKN Driveshaft (supra), that it is the duty of the AO to provide the reasons recorded for assumption of jurisdiction u/s.148. Further it is clear that after the reasons are provided to the assessee, the assesse may file objections against the issuance of notice thereafter the AO would pass the speaking order dealing with the objections raised by the assessee.

In the present case despite specifically request by the assessee to the AO / CIT(A) for providing the reasons recorded for assumption of jurisdiction , AO or the CIT (A) have failed to comply the mandatory requirement of law by providing the reasons recorded before issuance of notice under section 148 of ACT to the assessee, hence objection raised by the assessee vide letter dt.09.12.2008 remained unanswered. Further the reasons brought on record by the Standing Counsel for the Revenue, reproduced herein above are bereft of any reasoning and are not pertain to the years under consideration.

20. From a perusal of the two reasoning's reproduced herein above, it is not discernible as to for which BOI the reasons were

recorded, for which year it were recorded, what were the PAN nos of BOI and what were ground s for reopening. Further the reasons reproduced hereinabove are only the reasons forming part of the note sheet, whereas for the requirement of law, the reasons should be recorded separately and thereafter proceedings should be initiated by the AO.As the copy of reasons are required to be provided to the assessee and note sheet of the proceedings cannot acquire the status of reasons recorded

21. In our considered view, neither the copy of reasons recorded were provided to the assessee in terms of GKN Drive shaft (supra) nor request for providing the reasons was acceded to by the AO nor the request dated 9/12/ 2008 was disposed of by the AO by passing speaking order . Therefore the reassessment proceedings initiated by the Revenue against the BOI are without any jurisdiction. In the light of the above we allow the grounds 4 and 4.1 of the assessee's appeal in BOI cases bearing ITA Nos.273 to 342/Bang/2010, are allowed.

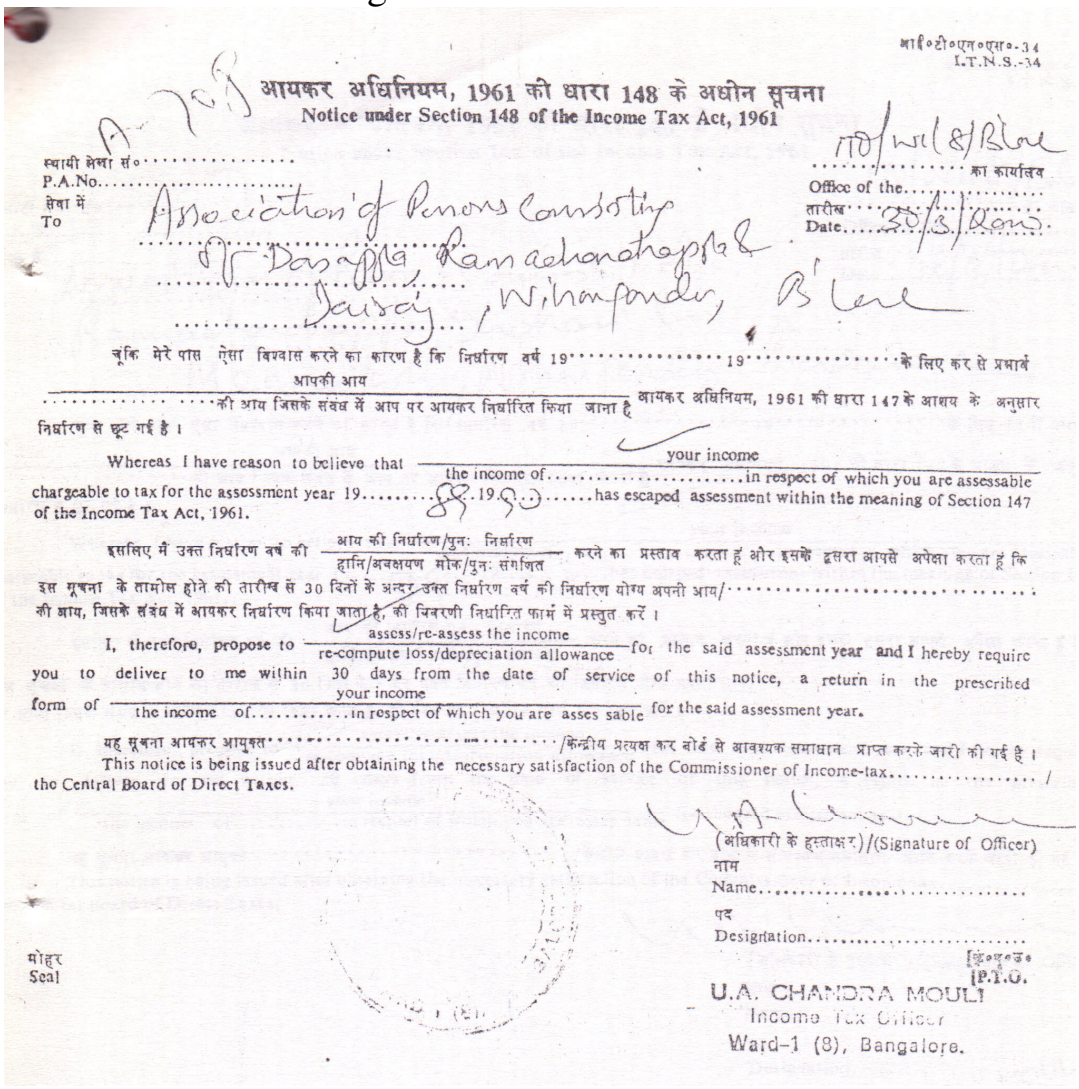
22. As we have decided ground nos.4 and 4.1 regarding the validity of the reopening proceedings in favour of the assessee, the other grounds are not adjudicated by us being academic in nature. In the result ITA Nos.273 to 342/Bang/2010, are allowed.

ITA Nos.68 to 103/Bang/2003 & ITA Nos.1359 to 1361/Bang/2002:

23. Now, we will deal with the other set of appeal filed by the assessee whereby the AO has treated the assessee as AOP pursuant. The assessee has raised grounds 2 and 3 in all the appeals pertaining to AOP in ITA Nos.68 to 103/Bang/2003 & ITA.1359 to 1361/Bang/2002 :

> *2. The order of reassessment is had in law and void-ab-initio for want of requisite jurisdiction especially, the mandatory requirements to assume jurisdiction u/s 148 of the Act did not exist and have not been complied with and consequently, the reassessment requires to be cancelled.*
>
> *3. Without prejudice to the above, the authorities below are not justified in completing the re--opened assessment protectively under the facts and in the circumstances of the appellant's case. They 'failed to appreciate that, provisions of Section 147 of the Act to re-open the assessment can be resorted to only where there is income escaping assessment and not merely on suspicion of income escaping assessment The action of the A.0. in assessing the income protectively clearly brings out the doubt and suspicion and consequently, the order of reassessment requires to be cancelled.*

24. In this regard, the Ld. AR has submitted that the Revenue, vide letter dt.30.03.2000 has issued a notice treating the assessee as AOP without giving any reasons for reopening. Scanned copy of the notice is given below :



आ०टी०एन०एस०-34
I.T.N.S.-34

आयकर अधिनियम, 1961 की धारा 148 के अधीन सूचना
Notice under Section 148 of the Income Tax Act, 1961

स्थायी लेखा सं०.....
P.A.No.....
सेवा में
To

110/Wil(8)/Blore
.....का कार्यालय
Office of the.....
तारीख
Date 30/3/2002

Association of Persons Consisting
of Dasappa, Ramachandrappa &
Jairaj, Nihanpandu, B'lore

चूंकि मेरे पास ऐसा विश्वास करने का कारण है कि निर्धारण वर्ष 19.....19.....के लिए कर से प्रभार्य आपकी आय
.....की आय जिसके संबंध में आप पर आयकर निर्धारित किया जाना है आयकर अधिनियम, 1961 की धारा 147 के आशय के अनुसार निर्धारण से छूट गई है।

Whereas I have reason to believe that your income
the income of.....in respect of which you are assessable chargeable to tax for the assessment year 19.....19.....has escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961.

इसलिए मैं उक्त निर्धारण वर्ष की आय की निर्धारण/पुनः निर्धारण हानि/अवक्षयण मोक/पुनः संगणित करने का प्रस्ताव करता हूं और इसके द्वारा आपसे अपेक्षा करता हूं कि इस सूचना के तामील होने की तारीख से 30 दिनों के अन्दर उक्त निर्धारण वर्ष की निर्धारण योग्य अपनी आय/.....की आय, जिसके संबंध में आयकर निर्धारण किया जाता है, की विवरणी निर्धारित फार्म में प्रस्तुत करें।

I, therefore, propose to assess/re-assess the income re-compute loss/depreciation allowance for the said assessment year and I hereby require you to deliver to me within 30 days from the date of service of this notice, a return in the prescribed form of your income the income of.....in respect of which you are asses sable for the said assessment year.

यह सूचना आयकर आयुक्त.....केन्द्रीय प्रत्यक्ष कर बोर्ड से आवश्यक समाधान प्राप्त करके जारी की गई है।
This notice is being issued after obtaining the necessary satisfaction of the Commissioner of Income-tax..... / the Central Board of Direct Taxes.

(अधिकारी के हस्ताक्षर)/(Signature of Officer)
नाम
Name.....
पद
Designation.....
[इं०प्र०से० I.P.S.]
U.A. CHANDRA MOULI
Income Tax Officer
Ward-1 (8), Bangalore.

मोहर
Seal

25. After receipt of the notice the assessee has filed the return of income under protest and thereafter vide letter dt.23.02.2002 the assessee requested the AO to provide copy of the reasons for reopening. The AO has not provided the reasons and has straight away completed the assessment proceedings. The Ld. AR submitted that in view of the law laid down by the Hon'ble Supreme Court in the matter

of GKN Driveshaft (supra), the proceedings concluded by the AO/ CIT(A) were devoid of any merit and was liable to be quashed being without jurisdiction.

26. On the other hand, the Ld. DR relied upon the order passed by the lower authorities.

27. We have heard the rival contentions and perused the record. The Hon'ble High Court, vide judgment dt.02.07.2010 have left all the issues open and directed the Tribunal to adjudicate the issue raised by the parties and the parties were given the liberty to file the documents / additional material, if any, to support their respective cases. At this stage, we wish to mention that the Revenue in the connected matter bearing ITA Nos.273 to 279/Bang/2010 in the matter of D. Vijay Kumar and Others has filed the paper book on 15.09.2010 ie. After passing of the judgment by the Hon'ble High Court. In the written submissions, it was contended by the Revenue at sl.no.12, that the assessee are accepting taxation as BOI even after the disruption and had agreed to pay the tax as per the KVSS in the capacity of BOI. Copy of scan document filled in connected proceedings is as under :

Sl. No.	Particular	Page No.	Remarks
1.	Assessment Order dated 10.03.95 in r/o BOI D.Vijaykumar, D.Ravindranath & D.Dasappa for AY 1992-93	1-7	Refer pages 4,5,6 & highlighted portions emphasizing facts
2	AO Enquiry letter dated 13/05/94	8	Information sought before issue of notice u/s148
3	Letter dt 24/02/94 of Assessee	9	Assessee showing inability to file details
4	AO letter dated 15/02/94	10	Enquiry letter seeking information from assessee before issue of notice u/s148
5	AOs enquiry letter dt 17/02/94	12-14	Information sought before issue of notice u/s148
6	AOs letter dt 18/12/96	15	
7	AO s letter dt 03/10/94 seeking information	16-18	Information sought before issue of notice u/s148
8	CIT(A) order in r/o Shri D.Ravindranath for AY 92-93	19-20	Refer Page 20- substantive assessment cancelled
9	Asst order u/s143(3) dt 22/02/95 in case of D Ravindranath	22-31	Detailed order showing that no details regarding these gifts /goodwill made available
10	ITAT Order in r/o 10 BOIs dated 12.03.01 for AYs 89-90 to 91-92	32-40	Refer page opp.page38 where reopening has been uphel and Page 37 where assessment on BOIs upheld
11	ITAT Order in r/o 10 BOIs dated 20.07.01 For AYs 86-87 to 88-89 , 92-93	41-46	Refer Highlighted portion on page 45 and opp to page46 showing reasons recorded
12	KARVIVAD CERTIFICATES In r/o 10 BOIs in respect of BOIs filed in March 99	47 – 55	showing that assessee accepted taxation as BOIs even after disruption also agreed to end the dispute and pay tax as per Karvivad scheme . Dept accepted but assessee did not kept its word

28. No other document or supporting evidence was filed establishing the existence of AOP and providing the evidence for supply of the reasons by the AO to the assessee in the proceedings before us.

29. In our considered view, neither the copy of reasons recorded were provided to the assessee in terms of GKN Drive shaft (supra) nor request for providing the reasons was acceded to by the AO nor the request dated 23.02.2002 was disposed of by the AO by passing speaking order. Under these facts and circumstances, in our view, the entire exercise of protective assessment made by the AO in the hands of AOP were done without jurisdiction and is liable to be quashed. Moreover no supporting documents were produced by the revenue for validating the assessment proceedings. Therefore ground nos.2 and 3 regarding the validity of the reopening proceedings are decided in favour of the assessee.

30. Therefore the reassessment proceedings initiated by the Revenue against the AOP are without any jurisdiction. In the light of the above we allow the grounds 2 and 3 of the assessee's appeal in AOP cases bearing ITA Nos.68 to 103/Bang/2003 & ITA Nos.1359 to 1361/Bang/2012, are allowed.

31. As we have decided ground nos.2 and 3 regarding the validity of the reopening proceedings in favour of the assessee, the other grounds are not adjudicated by us being academic in nature.

32. To summarise, all the appeals of the assessee totalling to 109 appeals, in ITA Nos.273 to 279/Bang/2010, ITA Nos.69 to 103/Bang/2003 and ITA Nos.1359 to 1361/Bang/2002, are allowed.

Order pronounced in the open court on 6th day of December, 2017.

Sd/-	Sd/-
(A. K. GARODIA)	(LALIT KUMAR)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Bengaluru
Dated : 06.12.2017

MCN*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

SENIOR PRIVATE SECRETARY