

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

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

ITA Nos.987, 991, 992, 994 to 996/Bang/2012
Assessment years : 1999-2000, 2003-04, 2004-05, 2006-07, 2007-08, 2008-09

Deputy Commissioner of Income-Tax, Central Circle, Mangalore.	Vs.	Shri. E. Ramesh Upadhyay, HUF, 'Gurukripa', Kalleri, Ramakunja PO, Puttur. D K 574241. PAN : AAAHE 1267 M
APPELLANT		RESPONDENT

C.O. Nos. Assessment years	APPELLANT	RESPONDENT
28/Bang/2013 1999-00 (in ITA No. 987/Bang/2012)	Shri. E. Ramesh Upadhyay, HUF, 'Gurukripa', Kalleri, Ramakunja PO, Puttur. D K 574241. PAN : AAAHE 1267 M	Deputy Commissioner of Income-Tax, Central Circle, Mangalore.
29/Bang/2013 2000-01 (in ITA No. 988/Bang/2012)	-do-	-do-
32/Bang/2013 2003-04 (in ITA No. 991/Bang/2012)	-do-	-do-
33/Bang/2013 2004-05 (in ITA No. 992/Bang/2012)	-do-	-do-
35/Bang/2013 2006-07 (in ITA No. 994/Bang/2012)	-do-	-do-
36/Bang/2013 2007-08	-do-	-do-

(in ITA No. 995/Bang/2012)		
37/Bang/2013 2008-09 (in ITA No. 996/Bang/2012)	-do-	-do-

ITA Nos. Assessment years	APPELLANT	RESPONDENT
974/Bang/2012 2000-01	Shri. E. Krishnamurthy, HUF, 'Gurukripa', Kalleri, Ramakunja PO, Puttur. D K 574241. PAN : AAAHE 1269 F	Deputy Commissioner of Income-Tax, Central Circle, Mangalore.
975/Bang/2012 2001-02	-do-	-do-
976/Bang/2012 2002-03	-do-	-do-
977/Bang/2012 2003-04	-do-	-do-
978/Bang/2012 2004-05	-do-	-do-
979/Bang/2012 2005-06	-do-	-do-
980/Bang/2012 2003-04	Shri. E. Krishnamurthy, HUF, Puttur. D K 574241. PAN : AAAHE 1269 F	Assistant Commissioner of Income-Tax, Central Circle, Mangalore.
981/Bang/2012 2006-07	-do-	Deputy Commissioner of Income-Tax, Central Circle, Mangalore.
982/Bang/2012 2007-08	-do-	-do-
983/Bang/2012 2008-09	-do-	-do-
1798/Bang/2016 2009-10	-do-	-do-

ITA Nos. Assessment years	APPELLANT	RESPONDENT
1024/Bang/2012 2003-04	Shri. E. Manohar, HUF, 'Gurukripa', Kalleri, Ramakunja PO, Puttur. D K 574241. PAN : AAAHE 1268 E	Assistant Commissioner of Income-Tax, Central Circle, Mangalore.
1025/Bang/2012 2006-07	-do-	Deputy Commissioner of Income-Tax, Central Circle, Mangalore.
1026/Bang/2012 2007-08	-do-	-do-
1027/Bang/2012 2008-09	-do-	-do-

ITA Nos. Assessment years	APPELLANT	RESPONDENT
1028/Bang/2012 2006-07	Shri. E. Thrivikrama, HUF, 'Gurukripa', Kalleri, Ramakunja PO, Puttur. D K 574241. PAN : AAAHE 1276 N	Assistant Commissioner of Income-Tax, Central Circle, Mangalore.
1029/Bang/2012 2007-08	-do-	Deputy Commissioner of Income-Tax, Central Circle, Mangalore.
1030/Bang/2012 2008-09	-do-	-do-

ITA Nos. Assessment years	APPELLANT	RESPONDENT
1031/Bang/2012 2003-04	Shri. E. Vidyaranya, HUF, 'Gurukripa', Kalleri, Ramakunja PO, Puttur. D K 574241. PAN : AAAHE 1277 P	Assistant Commissioner of Income-Tax, Central Circle, Mangalore.

1032/Bang/2012 2006-07	-do-	-do-
1033/Bang/2012 2007-08	-do-	Deputy Commissioner of Income-Tax, Central Circle, Mangalore.
1034/Bang/2012 2008-09	-do-	-do-

Revenue by	:	Shri. K. V. Arvind, Sd. Counsel
Assessee by	:	Shri. V. Srinivasan, Advocate

Date of hearing	:	11.09.2018
Date of Pronouncement	:	26.11.2018

ORDER

Per Bench

These appeals are preferred by the assessees as well as the Revenue against the respective orders of the CIT(A). Since all these appeals were heard together, these are being disposed off through this consolidated order for the sake of convenience. Basically, there are 6 sets of appeals and C.Os. filed either by assessees or by the Revenue.

2. The facts in brief relating to all these appeals borne out from the record are that a search under section 132 of the Income Tax Act took place in the case of Shri. E. Ramesh Upadhyaya and group cases. During the course of search, fixed deposit receipts in benami names and also in the names of the family members were found in the residential premises and also in the business premises of M/s. Aditya Enterprises wherein family members are partners and the same were seized. During the course of search from 29.07.2004 to

30.07.2004, a statement of Shri. E. Krishna Murthy, elder son of Shri. E. Ramesh Upadhyay was recorded and during the course of statement, he admitted that he made these deposits using unaccounted income earned which were not disclosed to the Income Tax Department. He also admitted that he has made these deposits in the name of persons who are fictitious and non-existent. In order to avoid TDS, he made the deposits in smaller denominations of amount of Rs.15,000/- each. During the course of assessment proceedings, statement of Shri. E. Krishna Murthy on behalf of all the searched persons were recorded. It was stated that the deposits were made by the bigger HUF i.e., Shri. Ramesh Upadhyay, HUF and later on the bigger HUF was dissolved and minor HUFs were created. The source of term deposits of Rs. 2,57,87,858/- in the name of family members was stated to be the agricultural income. The statement of Shri. E. Krishna Murthy and others were examined by the AO and he finally made the additions on account of unexplained investment in corresponding years in the name of Shri. E. Krishna Murthy and protective assessment was framed in different years in the hands of the bigger HUF as well as the different minor HUFs. Against the additions, the appeals were preferred before the CIT(A) and the CIT(A) held that there was a larger HUF which was dissolved and minor HUFs were formed. The CIT(A) has taken the cognizance of memorandum dated 22.03.2002 and registered deed of partition of immovable property dated 26.04.2002 seized during the course of search and concluded that there was a complete and total partition in the joint family of Shri. Ramesh Upadhyay in terms of memorandum dated 22.03.2002 which is followed by a registered partition deed for immovable property dated 26.04.2002 in the case of Shri. Ramesh Upadhyay, HUF. The CIT(A) has further held that since there is a complete and total partition of joint family, therefore no order of assessment could be passed on the joint family after its disruption, relying upon the

various judicial pronouncements referred to by the assessee. The CIT(A) accordingly deleted the additions made on account of unexplained deposits of FDRs on protective basis in the hands of Shri. E. Ramesh Upadhyay, HUF. In the case of Shri. E. Krishna Murthy and the minor HUFs, the CIT(A) has confirmed the additions. The minor HUFs have raised the claim before the AO that investments if any made by the minor HUFs in FDRs, it was out of agricultural income earned by them. The issue of agricultural income was also examined by the CIT(A) and the CIT(A) has enhanced the agricultural income estimated by the AO on the basis of the various evidences. But the CIT(A) in the case of Shri. E. Krishna Murthy, individual and minor HUFs made certain additions again on account of unexplained deposits in FDRs.

3. Aggrieved with the order of the CIT(A), the assessee as well as the Revenue are in appeal before the Tribunal. In the case of Shri. E. Ramesh Upadhyay, HUF, the assessee has also filed the cross objection, in support of the order of the CIT(A). During the course of hearing, the learned Counsel for the assessee invited our attention to certain facts that Shri. Ramesh Upadhyay, of the erstwhile hindu undivided family consisting of following co-parcener, some of whom are the other appellant before the Tribunal and his wife Smt. Yashodhara who was a member of the joint hindu family:

E. Krishna Murthy, Eldest Son

E. Vidyaranya

E. Thrivikrama

E. Manohara

E. Sudharshan

4. A search was conducted on 29.07.2004 at the residential premises of Shri. Ramesh Upadhyay and his family members and in the course of search, certain FDs in the names of the various family members of Ramesh Upadhyay as well as various pseudo names were found from the residence and the business premises of the assessee. The investment in FDR was computed as under:

In the names of family members – Rs.72,11,428/-

In the name of Pseudo names – Rs. 1,85,76,430/-

Total – **Rs.2,57,87,858**

5. Shri. E. Krishna Murthy being the eldest son of Ramesh Upadhyay appeared before the Revenue authorities and his statement was recorded. During the course of statement, E. Krishna Murthy admitted that the entire FDs under benami names belongs to him and his family members. He has also admitted that he was in a joint family and his father had distributed properties including the properties registered under the individuals amongst all the brothers and has given equal rights therein. During the course of statement, besides admitting that the FDRs belongs to him, he contended that investment was made out of agricultural incomes in FDRs. Therefore, credit of the same should be given while working out the unexplained investment. It was further contended that E. Krishna Murthy was cooperative with the Revenue authorities and had admitted that the FDRs belong to him and his family members. He has also made certain declarations. During the course of recording the statement, the breakup of investments year wise was also given. For the sake of reference, same is extracted hereunder:

“Ans. I have bifurcated the FDs made out of my business income and agricultural income of the family. I am submitting herewith the details of fixed deposits made out of agricultural income by the family members which are as under :-

F.Y. 1999-2000	Rs. 10.46.000/-
F.Y. 2000-01	Rs. 6,04,800/-
F.Y. 2001-02	Rs. 32,47,911/-
F.Y. 2002-03	Rs. 4,49,612/-
F.Y. 2003-04	Rs. 4,77,193/-
F.Y. 2004-05	Rs. 13,85,912/-
Total	Rs. 72,11,42.8/-

These are the FDs made out of the agricultural income earned by the family and the same will be reflected while filing the returns of income for the respective years in the hands of Ramesh Upadhaya [HUF] and whatever the interest income earned thereon will be offered for taxation. Regarding the benami deposits also I have gone through the statement shown to me and I confirm the figure which are as under :

<i>F.Y. 1999-</i>	<i>Rs. 16,66,000/-</i>
<i>2000 F.Y.</i>	<i>Rs. 21,50,100/-</i>
<i>2000-01 F.Y.</i>	<i>Rs. 65,25,041/-</i>
<i>2001-02 F.Y.</i>	<i>Rs. 39,26,649/-</i>
<i>2002-03 F. Y.</i>	<i>Rs. 13,31,210/-</i>
<i>2003-04 F.Y.</i>	<i>Rs. 29,77,430/-</i>
<i>Total</i>	<i>Rs. 1,85,76,430/-</i>

These are deposits made by me in various banks in benami and fictitious names as already given in writing on 13th September, 2004. This will be declared as my income in my individual capacity and the returns of income will be filed shortly. Here I would like to mention that though my family members are in various business activities, element of involvement of unaccounted portion of profit are also included in these FDs as these FDs are totally made by me and I am not in a position to quantify. However, to buy peace with the Department, I am declaring the entire amount of unexplained deposits made by me for taxation. I request you to kindly give telescoping view towards this declaration if at all any differences are found in respect of M/s. Lakshmi Prasanna Enterprises, M/s. Lakshmi Crushing Industry, my construction activity, land development, JCBs, M/s. Lakshmi Concrete Blocks, etc. I would like to specifically mention here that the seized materials seized from various premises may throw some light regarding the activities of JCBs Poline and also Trucks, which would have resulted in profits which are not at all accounted. If anything found, I request for telescoping the same towards the benami deposits offered for taxation.”

6. With regard to the investment in these FDRs, it was categorically stated by E. Krishna Murthy that FDRs were acquired out of business income and the agricultural income of the family. But later on, he has retracted from his statement within a short period. It was further contended that during the course of assessment proceedings and thereafter it was specifically asserted by the learned Counsel for the assessee that these FDRs belongs to the family members of the assessee. Therefore, it can only be examined in the hands of the HUF and not the individuals.

7. With regard to Ramesh Upadhyay, HUF, it was contended that Ramesh Upadhyay is a bigger HUF comprising of Shri. Ramesh Upadhyay as Kartha and his son E. Krishna Murthy, E. Vidyaranya Vidhya, E. Thrivikrama Trivikram, E Manohara Manohar and E. Sudharshan are the co- parceners. The said HUF was never assessed to tax and it was partitioned as per the memorandum dated 22.03.2002 and later registered vide partition deed dated 24.04.2002. Therefore, Shri. Ramesh Upadhyay, HUF was disrupted.

8. The learned Counsel for the assessee further invited our attention that consequent to the search under section 132 of the Act, the AO issued a notice under section 153A of the Act for the assessment years 1999-2000 to 2006-07 for making assessment in the hands of Ramesh Upadhyay, HUF. Regular assessment proceedings under section 143(3) were also initiated against the HUF for the assessment year 2007-08 and 2008-09. Though the assessee took a stand that on account of disruption of the larger HUF, no assessment can be framed in its hands of the HUF but the AO did not accept the contention of the assessee and framed the assessment by making additions on account of unexplained investments in FDRs in the

case of larger HUF Ramesh Upadhyay on substantive basis and made the protective assessment in the hands of minor HUF who were formed on account of disruption of the larger HUF. The CIT(A) accepted the contentions of the assessee relying upon certain judicial pronouncements and has quashed the assessment framed in the hands of the larger HUF but confirmed the additions made on account of unexplained deposits in FDRs in the hands of E Krishna Murthy, individual and in the hands of smaller HUF. The learned Counsel for the assessee further contended that the additions on a particular issue cannot be made in different hands. If the investment is made by the larger HUF which was disrupted on account of partition and new minor HUF was created, the addition cannot be made in the hands of individual only for the simple reason that during the course of recording the statement, he admitted that the FDRs belongs to him without realising that within a short span Shri. E. Krishna Murthy has retracted from his earlier statement and made a categorical statement that the investments were made by the HUFs in FDRs. It was further contended that atmost, addition can be made in the hands of the smaller HUFs after giving a proper adjustment of the agricultural income earned by the smaller HUFs.

9. The learned DR on the other hand has contended that investment in FDRs was neither disclosed by the individuals nor the HUFs in the return of income. It was surfaced during the course of search upon Ramesh Upadhyay and his family members. It was further contended that there should be a proper dissolution of the larger HUF as per provisions of section 171 of the Act and in dissolution of larger HUF, the smaller HUF may be created as it is a creation of law, not an Act. But in the instant case, there is no proper order under section 171 of the Act. Therefore, the larger HUF cannot be called to have been dissolved

by virtue of memorandum of partition dated 22.03.2002 which was claimed to have been registered on 26.04.2002. Since the larger HUF has not been dissolved, the AO has rightly assessed the entire investment in FDRs in the hands of Ramesh Upadhyay, HUF and also in the hands of E. Krishna Murthy who has admitted during the course of statement recorded by the Revenue authorities that the FDRs belongs to him. It was further contended that AO has made the protective assessment on the said investments in the hands of smaller HUFs in order to protect the interest of the Revenue.

10. We have carefully perused the orders of authorities below in the light of rival submissions and we find that there are 7 sets of appeals arising out of search conducted under section 132 upon Ramesh Upadhyay and his family members on 29.07.2004.

11. One set of appeal is preferred in the case of Ramesh Upadhyay, HUF through ITA Nos. 987, 991, 992, 994, 995 and 996/Bang/2012 for the assessment years 1999-2000, 2003-04, 2004-05, 2006-07, 2007-08 and 2008-09 respectively. These appeals are preferred by the Revenue as the CIT(A) has held that in the hands of larger HUF, which was disrupted/partitioned as per memorandum of oral partition dated 22.03.2002 and was registered vide partition deed dated 26.04.2002 no assessment can be framed. Though the Revenue has raised various grounds of appeal which are common in all appeals but they all relate to the finding of the CIT(A) holding that in the hands of the larger HUF which was disrupted, no assessment can be framed. In support of the order of the CIT(A), the assessee has filed its cross objections vide C.O. Nos. 28, 29, 32, 33, 35, 36, 37/Bang/2013.

12. Another set of appeals are filed by E Krishna Murthy, individual for the assessment year 2000-01, 2001-02, 2002-03, 2003-04, 2004-05, 2005-06 and 2009-10 against the order of the CIT(A) holding that investment in FDRs were admitted to have been made by E Krishna Murthy. Therefore, addition on account of unexplained investment is to be made in the hands of the assessee. Though various grounds of appeals are raised in these appeals, but they all relate to the finding of CIT(A) confirming the addition on account of unexplained investment made in the hands of the assessee.

13. Another set of appeal is filed by E Krishna Murthy, HUF for the assessment year 2003-04, 2006-07, 2007-08 and 2008-09 vide ITA Nos. 980 to 983/2012 respectively against the order the CIT(A) confirming the additions made on account of unexplained investment in FDR. Another set of appeal is filed by E Trivikram, HUF, for the assessment year 2006-07, 2007-08, 2008-09 vide ITA Nos. 1028 to 1030/Bang/2012 against the order of the CIT(A) confirming the additions made on account of unexplained investment in FDR. The next set of appeal is filed by E. Vidyaranya, HUF for the assessment years 2003-04, 2006-07, 2007-08 and 2008-09 vide ITA Nos. 1031 to 1034/Bang/2012 respectively, against the order of CIT(A) confirming the additions made on account of unexplained investments in FDRs. The last set of appeal is preferred by E. Manohara, HUF for the assessment years 2003-04, 2006-07, 2007-08, 2008-09 vide ITA Nos. 1024, 1025, 1026, 1027/Bang/2012. Though various grounds are raised in the aforesaid appeals i.e., of smaller HUF, but they all relate to the additions made by the CIT(A) on account of unexplained investments in FDRs.

14. Undisputedly, during the course of search conducted under section 132 of the Act in the premises of Ramesh Upadhyay and his family members on 29.07.2004, certain FDs in the name of various family members as well as pseudo names were found and seized. The AO issued notice under section 153A of the Act for the assessment years 1999-2000 to 2006-07 upon the larger HUF Ramesh Upadhyay for completing the assessment. Besides regular assessment was also framed for the assessment year 2007-08 and 2008-09 upon the larger HUF Ramesh Upadhyay. Though the assessee took a stand before the AO that Ramesh Upadhyay, HUF, was no longer in existence since it was partitioned on 23.02.2002 itself, no assessment could be made on the non-existent assessee HUF. But these contentions were not accepted by the AO and he framed the assessment in the hands of Ramesh Upadhyay, HUF and made the additions on account of unexplained investment in FDRs without realising the fact that assessee had agricultural income in all respective years for which he has placed sufficient evidence on record. Besides, AO has also framed assessment in the hands of E. Krishna Murthy, individual, for the assessment years 2000-01 to 2005-06 and 2009-10. He has completed the assessment in the hands of E. Krishna Murthy heavily relying upon the statement of E. Krishna Murthy during the course of search or thereafter that the FDRs belongs to him and his family members. It is also obvious from the record that Mr. E. Krishna Murthy was the eldest son of Ramesh Upadhyay and was also authorized on behalf of all brothers and father to prosecute the cases before the assessment and the appellate authorities. It is also evident from the record that Mr. E. Krishna Murthy has categorically stated that the total investment in FDRs was Rs. 2,57,87,858/- out of which FDRs in the name of the family members was of Rs.72,11,428/- and in pseudo names is Rs.1.85,76,430/-. Various statements were recorded on 29.07.2004, 02.08.2004,

03.08.2004, 06.08.2004 and 24.08.2004. E. Krishna Murthy has admitted that investment belong to him but the investment therein was made out of agricultural income. Initially, vide letter dated 13.09.2004, he agreed to offer the entire FD in pseudo names to the extent of Rs. 1.86 crores as income in individual capacity in order to buy peace with the department but later on he retracted from his earlier statement vide letter dated 27.11.2004 within a span of 2 ½ months from the last date on which the statement was recorded i.e., on 20.09.2004. After retraction letter dated 08.01.2005, he also filed explanation to notice under section 153A of the Act. In his letter it was specifically contended that the entire FD belonged to the Hindu Undivided Family as a whole and it did not belong to him in his individual capacity. He has also claimed that he has 70 acres of land out of which he was deriving huge agricultural income where from the FDRs were purchased. The learned Counsel for the assessee has also placed reliance upon various judgments in support of his contention that no addition can be made solely on the admission of the assessee. The judgments relied on by the assessee are as under:

1. *PULLANGODE RUBBER PRODUCE CO. LTD., reported in 91 ITR 18 [SC]*
2. *GREENVIEW RESTAURANT reported in 263 ITR 169 [Gaul];*
3. *CIT V. ASHOK KUMAR SONI reported in 291 ITR 172 [Raj];*
4. *MA YNAK PODDAR [11U11 reported in 262 ITR 633 [Cal];*
5. *NIRMALA L.MI'.717A V. CIT reported in 269 ITR I [Born]*
6. *BIIANDARI METALS AND ALLOYS P. LTD., reported in 136 STC 292 [Karl*
7. *CIT V. MR.P.FIRM.MUAR reported in 56 ITR 67 [SC]*
8. *S.R.KOSHTI V. CIT reported in 276 ITR 167 [Gull*
9. *KAILASHBEN MANHARLAL CHOKSHI reported in 174 Taxman 466 [Karl”*

15. Undisputedly, except the oral admission of E. Krishna Murthy during the course of search that no other evidence was found through which it can be demonstrated that the entire FDRs belongs to E. Krishna Murthy. Undisputedly, E. Krishna Murthy was pursuing all tax litigations before lower authorities and he was authorised to make the statement on behalf of his family members. In his statement he has reposed at a number of places that the FDRs belonged to the family members of the assessee and the investment was made out of the business and agricultural income. Moreover, the admission of E. Krishna Murthy was also retracted within a period of short span and it is a settled position of law that once the admission of the assessee is withdrawn and specifically retracted within a short period, the Revenue authorities are required to bring some independent evidence to make addition on the basis of the admission. In the instant case, except the oral statement of E. Krishna Murthy, there is nothing on record which can suggest that the investment was made in the FDRs by E. Krishna Murthy alone and it belongs to him. We have carefully examined the statement of E. Krishna Murthy recorded by the Revenue authorities at different points of time and we find that everywhere E. Krishna Murthy has taken a stand that FDRs belonged to him and his family members and investment was made out of business and agricultural income. We have carefully examined the order of the lower authorities and we find that while making an addition, no credit was given with regard to the business and agricultural income. Moreover, when the FDRs belonged to the family members of Ramesh Upadhyay and the investment was made out of the agricultural income earned from joint agricultural land, we are unable to understand as to how the addition of entire investment can be made in the hands of E. Krishna Murthy? Therefore, we find no merit in the order of the lower authorities with regard to entire addition in the hands of E. Krishna Murthy.

16. It is repeatedly stated during the course of assessment proceedings and thereafter that investment in FDRs belonged to the family members of Ramesh Upadhyay and the investment was made out of business and agricultural income of the joint agricultural land. Therefore, the investment in FDRs can only be examined in the hands of the HUF and not the individual. Now the question remains before us is as to whether the addition on account of investment in FDRs is to be made in the hands of the larger HUF or the smaller HUF.

17. On perusal of record and order of lower authorities, we find that larger HUF was partitioned or disrupted as per the memorandum of oral partition dated 27.03.2002 which was later on registered by partition deed dated 26.04.2002. Evidence to this effect was found during the course of search conducted on 29.07.2004 in the premises of Ramesh Upadhyay and his family members. Therefore, the genuineness of this oral partition and registered partition deed cannot be doubted. Now once the larger HUF is partitioned among the smaller HUF through partition deed, can the assessment be framed upon the larger HUF which has already been disrupted for those years in which it was seized to exist and also in the year in which it exists. Our attention was invited to provisions of section 171 of the Act by the learned Counsel for the assessee with the submission that provisions of 171 of the Act can only be invoked where the HUF has been assessed to tax. If it is not assessed to tax, the provisions of section 171 cannot be invoked for partition of the HUF. In this regard, our attention was invited to judgment of the Apex Court in the case of *Kalloomal Tapeswari Prasad vs Commissioner Of Income Tax 133 ITR 690 (SC)* in which it has been held that Hindu law does not require that this property must in every case be partitioned by metes and bounds or physically into different portions to complete the partition. Disruption of status

can be brought about by any mode and it is open to the parties to enjoy their share of property and in any manner known to law according to their desire. It was also observed by the Apex Court in that case that section 171 of the Act applies to a case where there is a HUF which had been assessed as such under the Act until claim is made under section 171(2) that there has been total partition or partial in it. Meaning thereby if the HUF is duly assessed under the Income Tax Act and if it is partitioned, the order is required to be passed by the AO under section 171 of the Act and while passing order under section 171 of the Act, the AO has to make a necessary enquiry but, in the case, where HUF has not been assessed to tax provision of section 171 cannot be invoked. In the instant case, admittedly Ramesh Upadhyay, HUF was never assessed to tax though it was partitioned through memorandum of understanding which was later on registered vide registered partition deed, order under section 171 is not required to be passed. Therefore, we find no merit in the contention of the Revenue that in the absence of the specific order under section 171 of the Act, Ramesh Upadhyay, HUF, is not partitioned and continue to be in existence. In the light of these facts, we are of the view that CIT(A) has properly appreciated the position and has held that the assessment cannot be framed in the hands of Ramesh Upadhyay, HUF which was seized to exist w.e.f. 22.03.2002. So far as the assessment for earlier assessment year 1999-2000 is concerned, we are of the view that the HUF cannot be assessed for those assessment years as the HUF has already disrupted and new HUF has been created. We, therefore, find ourselves in agreement with the order of the CIT(A) in this regard and for the sake of reference, we extract the order as under:

2.3.6 I have considered the issue involved in light of the judgement of the Hon'ble High Court of Karnataka and I proceed to decide the issue as follows :

(a) *The first finding of the A.O. is that the property belonging to Smt. Yashoda as her separate property was also shown as the property available for partition. The A.O. states that the property which belongs to a separate member cannot be partitioned and that the Doctrine of blending cannot apply with regard to the property of a female Hindu, It is true that a female cannot blend her separate property with the character of joint family property as affirmed by the ratio of the decision of the Hon'ble Supreme Court in the case of Pushpa Devi V. CIT reported in 109 ITR 730 but, she can always make a gift of her property in favour of the joint family. In the instant case, assuming the property is a separate property of Smt. Yashoda, her act of making available the property to the joint family for the members to treat it as joint family and subsequent consent for the partition amounts to transfer of her property in favour of the joint family especially, such property is subject matter of partition to which she has consented. This would amount to a gift. On that count, the subsequent partition will not become invalid. In this connection, I observe that the mere inclusion of the property belonging to Smt. Yashoda does not mean that there was no total partition of the joint family. This is because a partition of the joint family basically means the severance of status amongst the co-parceners of the joint family. What is important to be seen in a case where a claim of partition is made is whether there is a complete severance of status. From a perusal of the Translation of the Kutumbadalagina Vivadagalonu Rajinda Muqusi Madide Teermanagala mattu palugala Vivara (Memorandum] dated 22.03.2002, it is seen that in paras (19) & (20), the following is recorded :-*

"19. The respective parties have already taken separate possession of the immovable property and other assets now itself as an' allotted to them in partition made as stated above. Thus, the family is disrupted. The family is no more joint. None of the parties I to 11 shall have any rights to say that the shares made by the Grahasthas are not correct or that there should be a fresh partition in the family.*

20. That, if apart from the assets divided as stated above there is any immovable or movable properties or other assets stands in the name of any of the parties the same shall belong to such party absolutely. They shall not belong to the joint family". From the above, it is clear that there is a severance of status amongst the members of the family and therefore, it cannot be said that there was no partition in the joint family of the appellant having regard to the fact that the property belonging to Smt. Yashoda was -ahoo.th as property available for partition.

Similarly with regard to the objections of the A.O. on the ground that the separate property of the sons of Sri Ramesh Upadhaya were also shown as the property of the joint family and allotted in the partition, there is no justification to disbelieve the claim of partition on this score alone. At any rate, the Hon'ble Andhra Pradesh High Court in the case of A. Hanumantha Rao v. CWT reported in 65 ITR 586 has held that there need not be any formal document for blending of separate properties with that of the joint family. The Hon'ble Supreme Court in the case of CIT v. M.K. STREEMAN reported in 56 ITR 62 at page 66 observed "when instructions are given that the self-acquired property is to be treated as joint family property, in our opinion at that moment the property

assumes the character of joint family property. On execution, the deed becomes evidence of preexisting fact i.e., throwing the self-acquired property into the common hotch-potch. A mere instruction or a recital in a subsequent partition is sufficient to show that there was a blending of the separate property. The fact that the separate properties of the co-parceners have been taken in the partition deed would show that the said properties were also declared as joint family properties and available for partition. Nothing turns much on these observations of the learned A.O.

The next objection of the learned A.O. is that the properties belonging to Sri Ramesh Upadhaya and his wife Smt. Yashoda were allotted to their sons as two distinct groups. The A.O. held that some of the properties were allotted to Sri E.Krishnamurthy, E.Vidyaranya, E.Thrivikrama and E.Manohara, as one group and the remaining properties were allotted to Sri E.Sudharshan separately. According to the A.O. there is no full partition by virtue of such an allotment of properties. Even this objection of the A.O. is devoid of merit. This is because the allotment of property on a partition of a joint family can be done in several ways and there is no requirement that the allotment of properties should be done with regard to each co-parcener separately. Infact, if there is a severance of status amongst the members of the joint family in such a way that the bonds of co-parceners stand dissolved that would be sufficient for inferring a partition in the joint family. Hence, nothing turns much on this observation of the A.O.

The next objection of the A.O. is that the deed of partition does not reflect the names of all the co-parceners especially, the minor children of Sri E.Vidyaranya, E.Thrivikrama and E.Manohara. I find that this objection of the A.O. is not relevant and tenable. The partition has been effected between Sri Ramesh Upadhaya and his sons. There is no partition in the joint family of each of the sons of Sri Ramesh Upadhaya. Since the partition has been effected in the joint family of Sri Ramesh Upadhaya and his sons, the non-inclusions of the minor children of the sons of Sri Ramesh Upadhaya is understandable. Although the A.O. is correct in observing that the minor children would also be co-parceners, they are co-parceners of the joint family of their parents and the allotment of the property to the sons of Sri Ramesh Upadhaya would take care of their interest in the assets of the joint family. Hence, nothing turns much on this observation of the A.O.

The next observation of the A.O. is that some of the properties shown in the statement of affairs of Sri Ramesh Upadhaya (HUF) have not been allotted in the partition deed. However, this observation of the A.O. is misconceived, as para (20) of the Memorandum dated 22.03.2002 states that " the assets divided. as stated above, there is any immovable or immovable properties or other assets stands in the name of any other parties, the same shall belong to such party absolutely. They shall not belong to the joint family". From this recital it becomes clear that the properties not specifically allotted in the partition deed is also deemed to be partitioned and allotted to the person in whose name the property stands. Hence, it cannot be said that some of the assets of the joint family are not partitioned.

The last objections of the A.O. is with regard to the division of properties by metes and bounds. According to the A.O. since the properties have not been divided by metes and bounds, there is no total partition and at best the document can be considered as a family arrangement only. This view of the A.O. is fallacious. This is because the partition of the joint family has taken place in terms of the Memorandum dated 22.03.2002. In the said document, there is a clear and unequivocal declaration that the joint family has ceased to exist. In other words, there is a complete severance of status amongst the members/co-parceners of the joint family of Sri Ramesh Upadhaya and Sons. Although, the need for partition arose on account of disputes raised by Sri E.Sudharshan and with a view to assuage his feelings and with a view to prevent litigation, the parties would be resorted to settling of disputes it does not follow that the settlement of the disputes amounts to a family arrangement. Even if it was a family arrangement, a complete partition took place under the family arrangement. Had the Joint family continue to exist upon settlement of the disputes perhaps, the document would have been considered as a family arrangement. Hence, it is not correct to say that the Memorandum is only a family arrangement and not a total partition.

2.3.7 In light of the aforesaid discussion, I am of the view that there has been a complete and total partition in the joint family of Sri Ramesh Upadhaya in terms of the Memorandum dated 22.03.2002, which is followed by a registered partition deed for immovable properties dated 26.04.2002. There is also some dispute about whether the Memorandum dated 22.03.2002 was seized at the time of search or not. It is claimed by the appellant that the said documents have been seized. But, however, the A.O. denies the seizure of the said document. This aspect of the matter however, is not very material. This is because, the Memorandum dated 1.2.03.2002 has been furnished in course of the assessment proceedings and the genuineness of the document stands proved. The A.O. has not disputed the veracity of the said document although, he holds that the said document is only a family arrangement and not a deed of partition. I have already held that there is a complete and total partition of the joint family and therefore, no order of assessment could be passed on the said joint family or its disruption having regard to the judgements relied upon by the appellant. Hence, the impugned order is hereby cancelled.”

18. We accordingly confirm the order of CIT(A) in this regard and hold that assessment cannot be framed in the hands of Ramesh Upadhaya, HUF, as it has already been disrupted among smaller HUF.

19. Against this Revenue's appeal, the assessee has also filed the C.O. in support of the order of the CIT(A) and once we have confirmed the order of CIT(A), C.O. of the assessee becomes infructuous and we accordingly dismiss the same.

20. Since the addition cannot be made either in the hands of the HUF or in the hands of E. Krishna Murthy, individual, but somewhere, the investment in FDRs are to be examined. During the course of hearing, the learned Counsel for the assessee has contended that since beginning a specific stand has been taken by E. Krishna Murthy that investment was made on behalf of the family members and the source of investment is out of business or agricultural income. While making addition, the credit of the same was not given. It is also evident from the record that during the course of assessment proceedings, the AO has made the spot inspection of the agricultural land. The land holding is not disputed and the AO has counted the coconut trees in the agricultural land and computed the yearly agricultural income from the agricultural holdings and made the estimation of the same. The CIT(A) has also re-examined the assessment made by the AO and has enhanced the estimation of the agricultural income. The enhancement made by the agricultural income was not disputed by the Revenue. Therefore, we are of the view that whenever the investment in FDRs are to be examined, the agricultural income earned by the assessee in different assessment years should also be examined and credit of the same should be given. In the foregoing paras, we have categorically held that the additions made on account of unexplained investment in the FDRs cannot be made in the hands of Ramesh Upadhyay, HUF as it was disrupted through memorandum and in the hands of E. Krishna Murthy, individual as FDRs belongs to all the family members. The addition can only be made in the hands of the smaller HUF i.e.,

E. Krishna Murthy, E. Vidyaranya, E. Thrivikrama, E Manohara and E. Sudharshan. The CIT(A) confirmed the additions in the hands of the smaller HUF but the proper credit of the agricultural income was not given. We therefore are of the view that the entire investment in FDRs should be apportioned amongst all the smaller HUF. Similarly, the total agricultural income earned from the agricultural holdings and the business income should also be apportioned amongst all the smaller HUFs for its adjustment against the investment in FDRs in different assessment years. We therefore set aside the order of CIT(A) and restore the matter to AO with the direction to recompute the investment in FDRs in all the smaller HUFs E. Krishna Murthy, E. Vidyaranya, E. Thrivikrama, E Manohara and E. Sudharshan by making equal distribution and for computing the unexplained investment in each and every small HUFs, the adjustment of agricultural income estimated by the CIT(A) and business income earned by the individual smaller HUF should be given while computing the unexplained investment in FDRs in different assessment years.

21. In the result, appeals of the Revenue in the case of Ramesh Upadhyay in ITA Nos. 987, 991, 992, 994 to 996/Bang/2012 and C.O. of the assessee are dismissed. Appeals of the assessee in the case of E. Krishna Murthy, individual is allowed and the appeals of the smaller HUFs in the case of E. Vidyaranya Vidhya, E. Thrivikrama Trivikram, E Manohara Manohar and E. Sudharshan are allowed for statistical purposes.

Pronounced in the open court on this 26th day of November, 2018.

Sd/-

(G. MANJUNATHA)
Accountant Member

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore.

Dated: 26.11.2018.

/NS/*

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.