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

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
and
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

1. ITA Nos.1156 & 1157/Bang/2013
(Assessment years: 2003-04 & 2004-05)

2. ITA Nos.1158 & 1159/Bang/2013
(Assessment years: 2003-04 & 2004-05)

3. ITA Nos.1160 & 1161/Bang/2013
(Assessment years: 2003-04 & 2004-05)
And
4. ITA No.1162/Bang/2013
(Assessment year: 2003-04)

5 . ITA No.1163/Bang/2013
(Assessment year: 2003-04)
and
6. ITA No.1164/Bang/2013
(Assessment year: 2003-04)

1. K.Muniswamy Reddy (HUF),
2. K.Muniswamy Reddy (Indl),
No.119, Coconut Garden,
3rd Cross, New Thippasandra,
HAL II Stage, Bengaluru-560075.

3. K.Govinda Reddy (Indl.),
4. K.Govinda Reddy (HUF),
No.1198, Renuka Nilaya,
New Thippasandra, HAL III Stage,
Bengaluru-560075.

5. K.Ramesh Reddy (HUF)
6. K.Ramesh Reddy (Indl.)
No.953, 'Sunkamma Nilayam'
12th Main, HAL II Stage, Indiranagar,
Bengaluru-560038. … Appellant

Vs.

Asst. Commissioner of Income-tax,
Central Circle 1(3), ... Respondent
Bengaluru.

Assessees by : Shri V.Srinivasan, Advocate.
Respondent by : Shri G.Kamaladar, Standing Counsel

Date of hearing : 03/04/2017
Date of pronouncement : 07/06/2017

O R D E R

Per BENCH:

All these appeals are filed by the assessee directed against different orders of the CIT(A) for different assessment years. Since common issue is involved in all these appeals, we proceed to dispose of the same by way of this common order.

2. First, we take up the appeals bearing **ITA Nos.1158 & 1159/Bang/2013** in the case of K.Muniswamy Reddy (Indl.) for assessment years 2003-04 and 2004-05.

3. Brief facts of the case are as under: There is Krishna Reddy, HUF of which kartha is Shri Krishna Reddy. The said Krishna Reddy has three sons viz., K.Muniswamy Reddy, K.Govinda Reddy and K.Ramesh Reddy. These individuals have inherited certain properties through partition of Krishna Reddy, HUF. Income derived from these properties is assessed in individual capacity of the respective persons by the AO. Income arising out of above properties was assessed by the AO in the status of individual following the order of the Tribunal.

3. Being aggrieved an appeal was filed before the CIT(A). By the time the orders are passed by the CIT(A), the Hon'ble High Court of Karnataka reversed the order of the Tribunal in ITA No.96/2009 dated 08/12/2014 and the Hon'ble High Court held that the properties are to be assessed in the hands of HUF. Therefore, the CIT(A) deleted the addition made on account of the following properties:

a) Rent from Renuka Complex - it is confirmed that this property represents a gift received from the appellant's mother. It is admitted to be his individual property and rent there from is the individual's income
b) KMR Building - this property finds a mention in the block assessment of the assessee individual. The AR failed to identify it in the HUF partition deed dt. 20.04.1999. Hence, it is to be treated as the individual property of the appellant and its income assessed in his individual hands.
c) 381/1, Annasandrapalya, KR Puram Bangalore - this property is mentioned as item no. 2 at page 3A of the partition deed dt. 20.04.1999. Hence, to be treated as HUF property.
d) 520/1 Annasandrapalya, KR Puram Bangalore - this property is mentioned as item no. 3 at page 3A of the partition deed dt. 20.04.1999. Hence, to be treated as HUF property.
e) No. 235 Annasandrapalya, KR Puram Bangalore - this property is mentioned as item no. 4 at page 3A of the partition deed dt. 20.04.1999. Hence, to be treated as HUF property.
f) 670/1 New Thippasandara Bangalore - this property is mentioned as item no. 7 at page 4 of the partition deed dt. 20.04.1999. Hence, to be treated as HUF property.
g) Survey no. 9/1 and 9/2, Somenahally KR puram - In respect of this property the appellant had submitted before the AO as follows:

5.1 *"Myself and my brothers were in possession and enjoyment of about 6 acres of land in Sy No. 9/1 and 9/2 which we were cultivating as co-parceners of a joint family along with my father who was the kartha of the erstwhile family. In fact, our father Sri Krishna Reddy received the property from his father late Shri Muniswamy*

Reddy, who acquired it long ago. This property was also partitioned and this is also mentioned in the registered palupatti. Later however, the Sub-Registrar wanted us to delete it in as much as the schedule property was under acquisition, to enable him to register the document. Be it what it may, the property was also partitioned in the oral partition, which is recollected in the registered memorandum subsequently. The scoring of what was typed from the registered document itself is self-evident. Thus at the time of partition of the erstwhile HUF of Shri Krishna Reddy I was allotted 2 acres of this property and similarly my brothers received 2 acres each. However the compensation from KIADB was received by us in joint names and Rs. 53,70,000 was received by us on 15.04.2001. An additional compensation of Rs. 4,20,000 was received on 29.03.2003."

5.2 From examination of the HUF partition deed the scoring out of this entry is evident and the reason for the same also appears to be genuine since the appellant and his brothers in the HUF status had prepared the partition deed including this property considering it as the HUF property of Krishna Reddy. Only because the property had been identified for acquisition, the Sub-Registrar did not allow its inclusion in the partition deed. The striking out therefore was at his behest and the inclusion in the partition deed is evidence of its HUF origin. Hence, income related to the same is to be included in the HUF's assessment.

h) No. 39/3, Doddanekkundi, Bangalore - This property is found to have been purchased through a registered sale deed bearing document no. 15106 of 2001-02 in book no. 1, Volume 2375 at pages 223 to 227 dt. 05.03.2002 in the name of Shri K. Ramesh Reddy, younger brother of appellant who is seen to have paid Rs. 5,10,000 for the same. Since the date of registration is much later than the date of the HUF partition deed, and considering the investment by Ramesh Reddy, the AO considered it as the individual property of Ramesh Reddy substantively and made protective addition for the Short Term Capital Gains arising out of its transfer in the hands of Muniswamy Reddy.

But in respect of building KMR Building, the CIT(A) held that it belongs to individual as the AR failed to identify this property in the HUF partition deed dated 20/04/1999.

5. Being aggrieved, the assessee is before us in ITA No.1158/Bang/2013 for the assessment year 2003-04 contending that rental income from KMR Building amounting to

Rs.62,500/- cannot be assessed in the hands of the assessee in the status of an individual as the Hon'ble High Court held that this property belongs to HUF.

6. After considering the rival submissions and perusing material on record, it is undisputed fact that in the immediately preceding assessment year i.e. 2003-03, the Hon'ble High Court that this property belongs to HUF of the appellant. Therefore, should be assessed only in the hands of the HUF of the appellant. Hence, the grounds of appeal filed by the assessee are allowed.

7. For the assessment year 2004-05, apart from assessment of rental income from KMR Building, there is one another issue viz., unexplained investment on account of cost of construction in residential complex situated at site No.17, HASB Khata No.1071/448/17 Krishna Enclave Apartment, LB Sastry Nagar, Bengaluru. The AO made addition of Rs.7,63,000/-. It is contended on behalf of the assessee that the property belongs to HUF and therefore, no addition can be made in the individual assessment. Without prejudice to above it is further argued that difference in cost of construction made by the DVO and shown by the assessee is less than 10% of the total cost. In the circumstances, it is prayed that no addition should be made and reliance in this regard was placed on the decision of the ITAT in

ITA No.58/Bang/2009 dated 16/10/2009 in the case of Smt.Anasuya K Naik.

7.1 On appeal before the CIT(A), the CIT(A) had rejected the claim that the property belongs to HUF on the ground that it was purchased in the name of the appellant and his wife Smt. K.Radha after partition deed.

7.2 In our considered opinion, the CIT(A) was not justified in rejecting the same merely on the ground that this property does not find a place in the partition deed. It is always possible that property can be acquired out of nucleus of the funds of the HUF in which event, property always belongs to HUF. Therefore, income arising out of the property should be assessed only in the hands of the HUF. Thus, the appeals filed by the assessee viz. ITA Nos.1158 & 1159/Bang/2013 are allowed.

K.Govinda Reddy (Indl.): (ITA Nos.1160 & 1161/Bang/2013 Assessment years: 2003 & 2004-05):

8. Ground No.2 challenges assessment of annual value of property at Renuka Bangalore, in the status of the individual of the assessee. It is the contention of the assessee that it belongs to joint family and therefore, should be assessed in the status of HUF. In support of this, he relied on the order of the Hon'ble High Court of Karnataka passed for assessment year 2002-03

wherein it was held that this property should be assessed in the hands of HUF alone. The claim of the assessee is that this property was purchased on 3/2/1992 out of funds received pursuant to partition deed of his HUF. This contention was rejected by the CIT(A) holding that there was no documentary evidence in support of the partition of HUF. It was urged that the entire property was vacant during the year. Hence, no annual value should be assessed to tax.

After hearing rival submissions and perusing material on record, there is no bar under law to throw individual property into common hotchpot of HUF, even if the contention of the assessee that this property was purchased out of funds received on partition under partition from erstwhile HUF of his father to be disbelieved. In the circumstances, we hold that annual value of property is to be assessed in the hands of the HUF. Thus ground No.2 is allowed.

9. Ground No.3 challenges the assessment of annual value at No.1198, Renuka Nilaya, HAL III Stage, Bangalore. It is claimed that purchase of site and construction of building thereon have been made out of sale consideration received from assessee's share of flats in Krishna Apartment which are identified as HUF property. This contention was disbelieved by the AO as well as the CIT(A) on the ground that there was no evidence on record to demonstrate that this land was purchased

and construction thereon was made out of sale consideration of HUF income, whereas the contention of the assessee is that since nucleus of funds is from HUF, same should be assessed in the hands of HUF only.

After considering same, we are of the considered opinion that in absence of contrary evidence, explanation tendered in support of source of acquisition of property should be accepted. Therefore, we hold that annual value of property should be assessed only in the individual capacity.

10. In the result, the both the appeals are allowed.

ITA No.1164/Bang/2013 (K.Ramesh Reddy, Indl.): (2003-04):

11. The only ground of appeal challenges addition on account of assessment of short term capital gains of Rs.14,30,100/- on sale of property at survey No.39/3, Doddanakundi, Bengaluru,. It was stated before the AO that this property was purchased in the name of K.Muniswamy Reddy out of funds available with erstwhile joint family of Krishna Reddy. Therefore, it belongs to HUF. This version was disbelieved by the AO as well as the CIT(A) in absence of any documentary evidence.

After considering rival submissions and perusing material on record, it is trite law that in absence of any contrary evidence, explanation tendered by the assessee should e accepted. There is nothing on record to disbelieve the

explanation tendered by the assessee. We hold that short term capital gains should be assessed only in the hands of HUF.

12. In the result, appeal filed by the assessee is allowed.

ITA Nos.1156 & 1157/Bang/2013 (AYs: 2003-04 & 2004-05) (K.Muniswamy Reddy, HUF):

ITA No.1162/Bang/2013 (AY: 2003-04)(K. Govinda Reddy, HUF):

ITA Nos.1163/Bang/2013 (AY: 2003-04)(K. Ramesh Reddy, HUF):

13. The only issue involved in all these appeals is whether assessment can be made on disrupted HUF which is not hitherto assessed to tax. It is the contention of the assessees that annual value of the property should be assessed only in the status of HUF of the assessee. This contention has been accepted by Hon'ble High Court of Karnataka but it is the contention of the assessee that this HUF was partitioned on 14/01/2005 which was registered on 12/2/2005 and this undivided family was not assessed to tax hitherto. This issue has come up before the Hon'ble jurisdictional High Court in the case of *CIT vs. Lakkanna & Sons* (ITRC No.57/1994 dated 26/05/2005) wherein it was held that where HUF has not been assessed earlier, enabling provisions of section 171 of the Act cannot be applied to assess after partition in status of HUF. The relevant portion of the judgment is as under:

21. Sec.4 of the Act is the charging provision. It provides that when any Central Act enacts that income tax shall be charged for any assessment year at any rate, income tax at that rate shall be charged for that year in accordance with the provisions of the Income Tax Act, 1961, in respect of the total income of the previous year of every 'person'. Sec.2(31) of the Act defines the meaning of the expression 'person', to mean, apart from others, Hindu Undivided Family (HUF) and is assessed to income tax as a distinct unit of assessment. Sec.171 of the Act provides for assessment after a partition of a Hindu Undivided Family. Sub-section (1) of Se.171 of the Act applies only to a HUF, which has hitherto been assessed as undivided, by legal fiction provided in the sub-section for the purposes of the Act continues to be a HUF and continues to be so assessed as such unless the Income Tax Officer records by an order accepting partition. In the present case, prior to the assessment year 1980-1981, M/s Lakkanna and Sons – assessee was not assessed as a HUF. It was only for the first time, by a letter dated 30.8.1980, the assessee had informed the Income Tax Officer, that there was a total partition of the HUF on 25.4.1980.

The Income Tax Officer after enquiry and verification recognises the partition on 2.1.1984 for the assessment year, but for the assessment year 1980-1981, proceeds to accept the return of income filed by the HUF by an order made on 28.11.1980. Before the assessment order was passed, the HUF was partitioned on 25.4.1980. Therefore, when the assessment order was passed by the Income Tax Officer on 28.11.1980, the HUF was not in existence. Therefore, the procedure prescribed under Section 171 of the Act will have no application as the assessee was not 'hitherto assessed as HUF' and so the legal fiction created under that Section to deem it as HUF would not arise, since there is no other provision to assess the HUF after partition. Alternatively, it can be said that in the present case, the undisputed fact is that the assessee had never been assessed as HUF prior to the assessment year 1980-1981. There was a partition in the family much prior to passing of the assessment order i.e. on 28.11.1980. The assessee infact by its letter dated 30.8.1980 had intimated the Income Tax Officer the factum of disruption of HUF on 25.4.1980. The HUF was not in existence on the date when the assessments were concluded by the

Income Tax Officer accepting the return of income filed by the HUF on 24.7.1980. Therefore, the Income Tax Officer could not have assessed the assessee as HUF after the disruption of HUF status of the assessee, since the HUF had not assessed in that status prior to the relevant assessment year. However, Sri Sheshachala, learned Counsel for the Department would contend that since the HUF had filed its return of income under Sec.140-A of the Act, it is deemed to have been 'assessed to tax' and therefore, the Income Tax Officer was justified in invoking the provisions of Sec.171(1) of the Act, as undivided for the purposes of the Act and the assessee would continue to be HUF in view of legal fiction provided under the aforesaid provision. The learned Counsel in support of this contention, firstly, submits that the provision of Sec.171(1) of the Act is in pari materia with Sec.25-A of 1922 Act. To this effect, our attention is drawn to the observations made by the Apex Court in the case of Additional Income Tax Officer, Cuddapah Vs. A. Thimmayya and Another – 57 ITR 666, wherein the Court has observed that "the Income Tax Officer may assess the income of a Hindu family hitherto assessed as undivided

notwithstanding partition, if no claim in that behalf has been made to him, if he is not satisfied about the truth of the claim that the joint family property has been partitioned in definite proportions or if on account of some error or inadvertence if he fails to dispose of the claim. In all these cases, his jurisdiction to assess the income of the family hitherto assessed as undivided remains unaffected, for the reason, procedure for making assessment of tax is statutory. Any error or irregularity in the assessment may be rectified in the manner provided by the Statute alone, and the assessment is not liable to be challenged collaterally". Reliance is also placed on the observations made by the Apex Court in Kalwa Devadattam Vs. Union of India – 42 ITR 165. The learned Counsel for the revenue placing heavy reliance on the observations made by the Apex Court in the case of CIT Vs Shelly Products – 261 ITR 367 would contend that on filing of the return of income under Sec.139 of the Act, wherein total income is indicated, Sec.140-A of the Act providing for self assessment comes into operation and it is obligatory on the part of the assessee to discharge its tax liability. The tax payable on the basis of the returns filed by the assessee is

treated as 'assessed tax and it is not dependant on any regular assessment'. Therefore, the learned Counsel would submit that 'assessed tax' should be equated with the expression 'hitherto assessed as undivided'. This submission of the learned Counsel, in our opinion, is difficult to accept, for the simple reason, Sec.140-A of the Act speaks of self-assessment and no order is made by the assessing authority under that Section. Under Sec.171(1) of the Act, the key word is "hitherto assessed as undivided". If the family has already been assessed as HUF by the assessing officer/Income Tax Officer, then by legal fiction, it shall be deemed to continue to be undivided family unless the Income Tax Officer records an order accepting partition. Secondly, in our view, the decision on which reliance is placed by the learned Counsel would not assist the revenue in any manner, since the fact situation that was noticed and discussed were totally different. Infact, in Shelly Product's case – 261 ITR 367, the question before the Apex Court was, whether on the facts and circumstances of the case, whether the assessee/respondents are entitled to the refund of income tax paid by them by way of advance tax and self-assessment tax in the event

of the assessment framed being nullified by the Tribunal on the ground of jurisdiction and there being no possibility of framing fresh assessment? The fact situation in the present case, is in no way nearer to the facts and issue raised and decided by the Apex Court. Therefore, we say, that the observations made by the Apex Court in Shelly Product's case - 261 ITR 367 would not assist the revenue in any manner whatsoever.

22. The learned Counsel for the revenue to explain the meaning of the expression 'assessment' under Income Tax Act, has drawn our attention to the observations made by the Apex Court in the case of CIT Vs. Kemchand Ramdas – 6 ITR 414, wherein, the Court has observed, that "the word 'assessment' is used in Income Tax Acts as meaning sometimes the computation of income, sometimes the determination of the amount of tax payable, and sometimes the procedure laid down in the Act for imposing liability in the tax payer".

23. In the case of Additional Income Tax Officer and Another Vs. E. Alfred – 44 ITR 442, the Supreme Court has stated that "the word 'assessment' bears different meanings, and in one sense, it comprehends the entire process of computation and levy of tax. It is in this sense that the legal representative becomes an assessee by the fiction, and this fiction has to be fully worked out to its logical conclusion".

24. In A.N. Lakshman Shenoy Vs. Income Tax Officer and Another – 34 ITR 275, the Apex Court has observed that "in the context and collocation of the words of the Finance Act, 1950, the word "assessment" is capable of bearing only the comprehensive meaning and would include "reassessment". "Reassessment" will without doubt come within the expression "levy, assessment and collection of income tax" occurring in Sec.13(I) of the Finance Act".

25. The three expressions 'levy', 'assessment', and 'collection' are of widest significance and embrace in their broad

sweep all such proceedings for raising money by the exercise of power of taxation.

26. In our opinion, the term "assessment" is flexible, capable of many meanings. We say so, in view of the law declared by the Apex Court in its various decisions, which are brought to our notice by the learned Counsel for revenue. Therefore, in our view, what is the correct connotation of the expression in a given provision must, therefore, be determined on an examination of the said provision and the fact that the expression has been elsewhere used in a wider connotation will not mean that it is so used in the provision under examination.

27. Our attention is also invited by the learned Counsel for the revenue to the observations made by the Apex Court in the case of Income Tax Officer Vs. Mani Ram and Others – 72 ITR 203, wherein the Apex Court has explained that "the meaning of the word 'assessed' in Sec.18(3) of the 1922 Act, should be read in its ordinary sense as comprising every kind of assessment including a

provisional assessment under Sec.23-B of 1922 Act". In the said decision, the question before the Court was, whether the expression "any person who has not hitherto been assessed" in Sec.18A(3) of the Act, after the Income Tax (Amendment) Act, 1949 (67 of 1949) should be interpreted so as to include a person who has only been provisionally assessed under Sec.23-B of the 1922 Act? While answering the aforesaid question of law, the Court was pleased to observe that "since the respondent (assessee) had been provisionally assessed, they were not persons, who had "not hitherto been assessed" and were, therefore, not liable to submit an estimate under Sec.18A(3) of the Act or pay the tax; interest under Sec.18A(8) of the Act could not be charged or penalty under Sec.18A(9)(b) should not be levied in respect of the assessment years 1955-1956 to 1958-1959".

28. Lastly, the learned Counsel for the revenue has relied on the decision of Full Bench of Gujarat High Court in the case of Saurashtra Cement and Chemical Industries Ltd. Vs. ITO – 194 ITR 659. The view expressed in the said decision is confirmed by

the Supreme Court in Shelly Product's case - 261 ITR 367 and we have already made reference to the said decision in the earlier portion of our order and therefore, repetition of the same may be not necessary.

29. The learned Counsel Sri Parthasarathy, for the assessee, while justifying the findings and conclusion reached by the Income Tax Appellate Tribunal has brought to our notice the opinion expressed by the Karnataka High Court in the case of N.D. Hanumantharayappa Vs. Commissioner of Wealth Tax – 192 ITR 396, in the case of Commissioner of Wealth Tax Vs. G.E. Narayana and Others – 193 ITR 41 and in the case of CIT Vs. D.C. Basappa and Others – 251 ITR 673. Our attention is also invited to the observations made by the Supreme Court in the case of Roshan Di Hatti Vs. Commissioner of Income Tax, New Delhi – 68 ITR 177, wherein the Court has observed that "where a claim is made, that joint status of a HUF was dissolved before an order of assessment is made by the Income Tax Officer, the decision of the Supreme Court in Kalwa Devadattam's case – [1963] 49 ITR 165,

will have no application because the Supreme Court in that case was not called upon to interpret the expression "hitherto assessed as undivided" in sub-sections (1) and (2) of Sec.25-A of Indian Income Tax Act, 1922, and did not lay down that a family not previously assessed to tax may be assessed after partition in the status of a Hindu Undivided Family until an order under Sec.25-A of the Act is passed by the Income Tax Officer".

30. The learned Counsel for the assessee has brought to our notice, the observations made by the Gujarath High Court in the case of CIT Vs. Kantilal Ambalal (HUF) – 192 ITR 376, the decision of Andhra Pradesh High Court in the case of Addl. Commissioner of Income Tax Vs. P. Durgamma – 166 ITR 776 and the decision of Allahabad High Court in the case of Ambika Prasad Sonar Vs. Commissioner of Income Tax – 168 ITR 444.

In Kantilal Ambalal's case – 192 ITR 376, the Gujarat High Court has observed that "the provisions of Sec.171 of the Income Tax Act, 1961, has no application to a case of a Hindu Undivided Family which has never been assessed before as a joint family, i.e.

as a unit of assessment. In other words, this Section has application to a Hindu Undivided Family which has been assessed before as joint family and if the Hindu undivided Family has never been assessed to tax, this Section has no application".

In Ambika Prasad Sonar's case – 168 ITR 444, the Allahabad High Court has stated that "in order that sub-section (1) of Section 171 may apply, all that is necessary is that there is a family which, prior to the relevant claim for partition, has been assessed to tax as Hindu Undivided Family. The fact that the family has been so taxed prior to the relevant assessment year is sufficient to bring that family with the expression 'hitherto assessed as undivided family'. It is not a further condition of sub-section (1) of Sec.171 of the Act that the family must continuously be so assessed without any break in respect of its income or must have been so assessed till the immediately preceding year in which the claim for partition is made under Sec.171(2) of the Act".

In P. Durgamma' s case – 166 ITR 776, the Andhra Pradesh High Court has observed that "the fiction that a joint family shall be deemed to continue, enunciated in Sec.171(1) of the Income Tax

Act, 1961, is for the limited purpose of levying in cases of joint families which had hitherto been assessed. It is not possible to extend that fiction beyond the field legitimately intended by the statute. The fiction in Sec.171(1) must necessarily be confined to the purpose for which it was specified in that Section and for no other purpose. The expression "hitherto assessed" occurring in Sec.171(1) of the Act is significant. It makes it clear that only a Hindu Undivided Family which had suffered tax assessment in the past could be deemed to continue to be Hindu Undivided Family till an order of partition under Sec.171(1) is recorded".

31. Since the observations made by the Gujarat High Court, Allahabad High Court and the Andhra Pradesh High Court is in consonance with our findings and conclusion reached, which we have noticed in our earlier portion of our order, we respectfully agree with those findings and conclusions. Before we conclude, we intend to observe, may be at the cost of repetition, that in the present case, M/s Lakkanna and Sons, a HUF – assessee had filed its return of income for the assessment year 1980-1981. Even

before the completion of the assessment proceedings, the assessee had intimated the IncomeTax Officer the disruption of the HUF. At no point of time, HUF had been assessed to tax under the Act. In view of this factual position, the procedure prescribed under Sec.171 of the Act will have no application, as the assessee was not 'hitherto assessed' as HUF and so the fiction created under that Section to deem it, as HUF will not arise. Therefore, the assessment made on the assessee as HUF is not valid.

In light of the ratio laid down by the Hon'ble High Court in the above case, since HUF of respective parties is already disrupted, there cannot be any assessment. Therefore, assessments framed in the present case are cancelled.

13. In the result, the appeals filed by the assessees are allowed.

Order pronounced in the open court on this 07th June, 2017

Sd/-	sd/-
(VIJAY PAL RAO)	**(INTURI RAMA RAO)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Place : Bengaluru
D a t e d : 07/06/2017

srinivasulu, sps

Copy to :

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore