

**Shri Yeshwant U. Chavan, I.R.S.
Asst. Commissioner of Incometax,
Circle 1(2), Hyderabad.**

आई. टी. एन. एस.-65
I. T. N. S.-65

**WEALTH TAX आयकर विभाग
INCOME TAX DEPARTMENT**

- | | |
|---|---|
| 1. निर्धारित का नाम
Name of assessee
M/s.M&M Associates
1-10-72/2/3, | 6. निर्धारण वर्ष
Assessment year
1986-87 |
| 2. पता
Address
Begumpet,
Hyderabad - 500 016. | 7. क्या निवासी/निवासी किन्तु भाग्यशीली तौर पर निवासी नहीं/
अनिवासी
Whether Resident/Resident but not Ordinarily resident/
Non-resident.
Resident |
| 3. एफ.ए.नं.सं./सा.सं. रं.सं.
P.A. N./G. I. R. No. M-622/AC 1 (2) | 8. लेखा विधि
Method of accounting
- |
| 4. जिला/वार्ड/सर्कल
District/Ward/Circle AC 1 (2)/HYD | 9. पूर्व वर्ष
Previous year. 31/07/1985 |
| 5. स्थिति
Status A.O.P. (TRUST) | 10. कारबार/कारबारों की प्रकृति
Nature of Business(es).
- |
| (क) यदि हि.अं.कुं. है तो क्या कर की उच्च दर लागू होती है?
(a) If HUF, is higher rate of tax applicable? | 11. सुनवाई की तारीख/तारीखें
Date(s) of hearing
- |
| (ख) यदि कम्पनी है तो
(b) If company, whether | 12. आदेश की तारीख
Date of order 31/03/1992 |
| (i) देसी/अन्य
Domestic/Others | 13. किस धारा तथा उपधारा के अधीन निर्धारण किया गया
Section and sub-section under which the assessment is made.
16(S) |
| (ii) जनता का पर्याप्त रूप से हितबद्ध/जनता का पर्याप्त रूप से हितबद्ध नहीं
Public substantially interested/Public not substantially interested. | |
| (iii) औद्योगिक/गैर औद्योगिक
Industrial/Non-industrial | |
| (iv) धारा 108/धारा 108 से निम्न
Section 108/other than section 108 | |

निर्धारण आदेश
ASSESSMENT ORDER

Notice U/S 17(1) was issued on 27/03/89 and served on the assessee on 15/06/89. In response to notice Shri Ajay Mehta CA appeared on behalf of the assessee on 26/03/92 and filed a letter dated 26/03/92.

As per the letter the assessee Trust has negative wealth as per Balance Sheet already filed alongwith the I. T. Returns for relevant year. However no returns was filed by the assessee hence the assessment is completed ex-parte, on merits.

P.T.O.

In view of the information available the net taxable wealth is computed as under.

Net taxable wealth : NIL
Closed as 'ND' :

Y. U. Chavan
(Yeshwant U. Chavan)
Asst. Commissioner of Incometax,
Circle 1 (2) : Hyderabad.

Copy to the assessee.

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REFERENCE UNDER SECTION 55-A of the ACT,

Asst. Commissioner of Incometax,
Circle-1(4), Hyderabad.
Dt/ 27-3-89.

To
The Asst. Valuation Officer,
Valuation Cell(Unit-1),
Hyderabad.

Sir,
Sub: Cost of construction of the properties -
M/s. M.M.Associates, Hyd - Reg.
...

My assessee M/s. M.M.Associates, Hyderabad, have
constructed the following properties. I request you
to evaluate the cost of construction of the properties
relevant for the asst.year: 86-87:

1. Rasoolpura property

1-20-2730A
Rasoolpura, Hyderabad.

- 1. Land -- 3000 sq.yds.
- 2. Large shed -- 12213 sq.ft.
- 3. Double storied building 'T' shape: 2024 sq. ft.
- 4. Open land -- 1342 sq. ft.

2. Methodist complex,
5-9-189/190, Abid Road,
Chiragalilane, Hyderabad

-- 3300 sq. yds.

Yours faithfully,

[Signature]

Asst. Commissioner of Incometax,
Circle-1(4), Hyderabad.

Copy to assessee ✓

M/s. M.M. Associates

1-10-72/2/3

Med. Buildings, Begumpet - Hyd Bad

[Handwritten notes]
15/6/89

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Notice u/s 17.1(a) of W.T. Act

आई.टी.एन.एन-34
ITNS-34

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

पत्राकी सेवा सं. 17.622
P. A. N.

Office of the

सेवा में,
To.

तारीख 27.3.87
Date

M/s. M & M Associates
1.10.22.12.13 mod. Buildings
Begumpet Htd. Sec. Bd

चूंकि मेरे पास ऐसा विश्वास करने का कारण है कि निर्धारण वर्ष 19.....86.....19.....87.....के लिए कर से प्रचार्य
अपनी आय की आय जिसके सम्बन्ध में आय पर आयकर निर्धारित किया जाना है आयकर अधिनियम, 1961 की धारा 147 के अन्वय में
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. 17.1(a) of W.T. Act

इसलिए मैं उक्त निर्धारण वर्ष की आय को निर्धारण / पुनः निर्धारण करने का प्रस्ताव करता हूँ और इसके द्वारा आपसे अपेक्षा करता हूँ कि
हानि/अवमूल्यन मोक्ष/पुनः संवर्धित
इस सूचना के तारिख होने की तारीख से 30 दिनों के अन्दर उक्त निर्धारण वर्ष की निर्धारण योग्य अपनी आय /
की आय, जिसके सम्बन्ध में आयकर निर्धारण किया जाता है, कि 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 assessable for the said assessment year.

यह सूचना आयकर माधुवन/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.



Handwritten signature and date: 27/3/87

(अधिकारी के हस्ताक्षर)
(Signature of Officer)
नाम
Name.. ASSISTANT COMMISSIONER
पद
Designation..... CIRCLE-I (4), HYDERABAD.

P. T. O.
80900

708
PROCEEDINGS OF THE ASST.COMMISSIONER OF INCOMETAX, CIRCLE.1(2), HYD.

Shri J. Albert, IRS
Asst. Commissioner of Incometax.

GIR.No.M.622/Ac.1(2).

Dated.20.8.1990.

Sub: Modification - M/s.M & M Associates, 1-10-72/2/3,
Modi Buildings, Begumpet, Sec'bad - A.Y 86-87 -
orders - passed - regarding.

ORDER: Consequent to the appeal in order No. 147/AC.1(4)/CIT(A)-I/89
90 dt.29.6.90 the assessment of the above assessee is modified as
under :-

Correct total income after rectifying totalling mistake in assessment order.	: Rs.13,63,293/-
Less: Relief given in appeal.	: Rs.19,94,808/-
Revised total loss ...	Rs. 6,31,515/-
Tax thereon : Rs, nil.	

copy to the assessee.

J. Albert
(J. Albert)
Asst. Commissioner of Incometax
Circle.1(2) ::: Hyderabad.

J. Albert
31/8/90

IN THE OFFICE OF THE APPELLATE
ASSISTANT COMMISSIONER

OF INCOME TAX

Range _____

Date of Order : 29-06-1990

Income-tax Appeal No. 147/AC 1(4)/CIT(A)-I/89-90

Dr.M.V.R. Prasad,
Commissioner of Incometax(Appeals)-1

Instituted on the 25-04-1989

From the order of the Income-tax Office of A.C 1(4), Hyd. (Sri Ch.Prasada Rao)

- | | | | | | |
|--|---|------------|----------------|-----------|----------------|
| 1. Year of assessment | 1986-87 | | | | |
| 2. Name of the Appellant | M & M Associates
1-10-72/2/3, Modi Builders
Begumpet, Hyderabad. | | | | |
| 3. Income assessed | | | | | |
| 4. Tax demanded | <table><tbody><tr><td>Income-tax</td><td>Rs.13,92,170/-</td></tr><tr><td>Super-tax</td><td>Rs.10,70,185/-</td></tr></tbody></table> | Income-tax | Rs.13,92,170/- | Super-tax | Rs.10,70,185/- |
| Income-tax | Rs.13,92,170/- | | | | |
| Super-tax | Rs.10,70,185/- | | | | |
| 5. Section under which assessment was made | 143(3) r.w.s. 161(1A) | | | | |

Date of hearing 26-06-1990

Present for Appellant Sri Anilkumar B.Vithlani,CA.

APPELLATE ORDER AND GROUND OF DECISION

ITA No.147/AC 1(4)/CIT/(A)-I/89-90

The appellant is a private family trust wherein the shares of the beneficiaries are known and determined. The Settlor of the Trust was one Sri Ashok Chaturlal Desai and the trust was created vide a settlement deed dated 31st March, 1981. It is not necessary to go into the details of the beneficiaries. The appellant trust entered into a partnership with one Sri Satish Chandra Modi in his capacity as representing his HUF and the partnership came into existence vide a deed dated 2-4-1981. It may be mentioned that the children of Sri Satish Chandra Modi were the beneficiaries in the appellant trust along with others. The business of this firm was conducted under the name and style of M/s. Modi Builders. The profit sharing in M/s. Modi Builders is as under:

Sri Satish Chandra Modi	-	5%
M/s.M & M Trust (Appellant trust)	-	95%

		100%

For the assessment years 1983-84 to 1985-86, the appellant did business only through being a partner in the partnership firm M/s. Modi Builders.

.2. It is necessary to give the details of the business activities of M/s. Modi Builders as they have a bearing on the issues in the appeal. M/s. Modi Builders undertook some civil contracts and apart from them, it undertook two projects (i) to develop a property called Rasoolpura property and the other (ii) to develop the property

Contd..3

belonging to the Methodist Church, Hyderabad. One M/s. Investa Chemicals were the owners of Rasoolpura Property which is situated adjacent to Begumpet Airport. The land situated at Rasoolpura property was taken on lease from M/s. Investa Chemicals for a period of 17 years and the plot was to be developed at the cost of the lessee i.e. the appellant trust but the ownership of the property 'brick by brick' belonged to the lessor. The expenditure on the construction and development of the superstructure was to be met by the lessee and the income by way of letting out the construction of the superstructure was to be enjoyed by the appellant trust for a period of 17 years.

3. There is a dispute in the present appeal about the claim for a deduction of some expenditure incurred in connection with the development of Rasoolpura property and that question will be detailed hereinafter.

4. In respect of the Methodist Church, M/s.Modi Builders entered into an agreement dated 9-1-1982 vide which the firm undertook to develop the property on an area of about 3,300 sq.yards near State Bank of Hyderabad, Abid Road, Hyderabad. Here also, the superstructure belonged 'brick by brick' to the Methodist Church and the income from the superstructure was to be enjoyed by M/s. Modi Builders. M/s.Modi Builders found it convenient to assign its rights and obligations under the agreement dated 9-2-1982 with Methodist Church to one Sri Parmanand Bajaj and through

him subsequently to a private limited company M/s. Shiv Shakti Constructions Private Limited of Bombay. The rights were assigned to a private limited company for a consideration of Rs.12.5 lakhs. Before the assignment of the rights to the private limited company, M/s. Modi Builders incurred an expenditure of Rs.3.6 lakhs on the property. Subsequently, the partnership firm M/s. Modi Builders was wound up vide a Deed of Dissolution dated 3rd August, 1984. At this stage, it may be convenient to reproduce the terms of the dissolution deed.

DEED OF DISSOLUTION

THIS DEED OF DISSOLUTION made and executed at Hyderabad on this the 3rd day of August, 1984 by and between:-

1. Sri Satish Chandra Modi, S/o. Manilal Modi, aged about 44 years, residing at Flat No.701, Sarita Apartments, Road No.4, Banjara Hills, Hyderabad representing herein as Karta of HUF with Sohan.

A N D

2. Sri Mahesh Desai, S/o. Kantilal Desai of Secunderabad representing as Trustee of M & M Associates (a determined Trust).

HEREINAFTER called the party of the First Part and the Party of the Second Part.

WHEREAS the parties above named were doing business in Partnership under the name and style of "MODI BUILDERS" with Registered Office at 5-4-187/3 & 4, Karbala Maidan, Secunderabad since 2-4-1981 and the relations inter se were governed by the Deed of Partnership dated 2-4-1981.

AND WHEREAS differences have arisen amongst the parties as to the conduct of the business.

AND WHEREAS the parties to these presents have mutually decided to dissolve the Partnership with effect from 1-8-1984.

THEREFORE, THIS DEED OF DISSOLUTION OF PARTNERSHIP WITNESSETH AS FOLLOWS:-

1. The Partnership hitherto carried on by the parties stands dissolved with effect from 1-8-1984.

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2. Books of Accounts upto the date of Partnership shall be made up within a reasonable time. Sri Satish Chandra Modi (Representing herein as Karta his HUF with Sohan) shall be paid, the amount if any to the credit of his account; if there is any debit balance, the said Sri Satish Chandra Modi shall not reimburse the same, but it shall be treated as "GOODWILL" paid to him on Dissolution of the Firm.
3. All Assets and Liabilities of the Partnership as on the date of Dissolution shall be taken over by M/s. M & M Associates. Sri Satish Chandra Modi as Karta shall not have any right whatsoever in the tangible or intangible assets of the Partnership.
4. Sri Satish Chandra Modi shall execute all papers and documents which are necessary for the implication of this Deed of Dissolution of Partnership.
5. Any tax liability on the firm upto the date of Dissolution shall be borne by the parties in the same proportions as envisaged in the Deed of Partnership dated 2-4-1981.

IN WITNESS WHEREOF the parties to these presents have set their hands on this the date and the year first above written.

WITNESSES:

1. Sd/- xxx
Sd/- xxx
(Satish Chandra Modi)
2. Sd/- xxx
Sd/- xxx
(Mahesh Desai)

From the above dissolution deed, it is evident that the appellant trust succeeded to the assets and liabilities of the erstwhile partnership M/s. Modi Builders. With this background, the individual objections taken in the present appeal may be discussed.

Contd..7

5. The first objection is to the addition of Rs.11 lakhs being the amount written off by the appellant trust in respect of the debts from M/s. Shiv Shakti Construction Limited. The addition is made with the following observations:-

(1) Debt due from M/s. Shiv Shakti Construction Ltd. written off as Bad-

The assessee debited his trading account with a sum of Rs.11,00,000 as representing contract..... due to failure of the contract between M/s. Modi Builders and the debtor. The assessee claimed this loss on the ground that the total construction was already assessed in the hands of the firm for the asst.year 1983-84. The loss claimed is not admissible for the following reasons:-

- (a) the assessee firm was dissolved with effect from 1-8-1984 and the assessee - trust had taken over the business of the firm as a proprietary concern. Even earlier, in the firm the assessee-trust was a partner with a share of 95% along with Sri Satish Modi with 5% who is also one of the beneficiaries in the Trust in his individual capacity. The Trust and the firm are more or less the same and the income assessee in earlier year not disputed in appeal cannot be excluded in a subsequent year.
- (b) the assessee-trust did not make any steps for the recovery of the same as a breach of contract, so as to treat it as a debt irrecoverable.
- (c) under Clause 2 of the Agreement the builder shall pay the amount of Rs.12.5 lakhs within the stipulated time to the owner of the land and failing which, he cannot have the power to transfer the

right to a third party and Cl.25(2) cannot, therefore, override Cl.2. The transfer is thus illegal and the debt did not, therefore, become bad in this course of legal transaction.

The assessee's claim is, therefore, rejected and the loss claimed is disallowed. .. 11,00,000,,

5(i) As already mentioned, the rights in respect of the property belonging to the Methodist Church were assigned to M/s. Shiv Shakti Construction Pvt. Ltd., for a consideration of Rs.12.5 lakhs. This amount was offered to tax in the hands of M/s. Modi Builders on accrual basis even though, only a sum of Rs.1.5 lakhs was actually received. Subsequently, the assignment of the rights to M/s. Shiv Shakti Construction Pvt. Ltd., had to be cancelled because the Church objected to the transfer of the rights. Because of the objections taken by the Church, the appellant firm entered into another partnership with M/s. Shiv Shakti Construction Pvt. Ltd., under the name and style of M/s. Modi Builders, Methodist Complex and the rights in respect of the property belonging to the Church were assigned to this partnership firm. As the appellant trust was also a partner, the Church did not object to the assignment of the rights for the development of the property to the new partnership firm M/s. Modi Builders Methodist Complex. Because of the assignment of the rights the earlier agreement with M/s. Shiv Shakti Construction Pvt. Ltd. had to be cancelled. Naturally, M/s. Shiv Shakti Construction Pvt. Ltd. declined to pay the balance amount of Rs.11 lakhs. This amount which had already been offered to tax in the hands of M/s. Modi Builders, had to be written off.

Contd..9

Alternatively, it need not be treated as a write off. It can be treated as a payment made to the company by the appellant trust for the termination of the agreement assigning the rights to develop the property belonging to the Church. In other words, it has to be treated as a business expenditure. The Assessing Officer appears to have been misguided in treating it on par with a bad debt. The appellant trust had no right to demand this amount after the cancellation of the agreement assigning the rights in respect of the property belonging to the Church. Having cancelled the agreement, though at the instance of the Church, the appellant trust could no longer have demanded the amount of Rs.11 lakhs from M/s. Shiv Shakti Construction Pvt. Ltd. The so-called off has to be treated as a business expenditure. So, I have to allow the ground taken by the appellant trust in respect of the addition of Rs.11 lakhs and delete the addition. The addition is hereby deleted.

6. The next objection is to the addition of Rs.1,50,000/- being the financier's charges paid to one Bhagwandas M.P. Family Trust, The Assessing Officer made the addition with the following observations:-

"(2) Financier's consideration paid to Bhagwandas M.P. Family Trust:-

During the previous year relevant for the asst. year 1986-87, the assessee paid Rs.1,50,000/- representing financier's consideration. As per the agreement entered into with Bhagwandas M.P. Family Trust on 1-7-1982 the financier had to advance Rs.8 lakhs over a period of time and the

Contd..10

assessee trust had to give him fixed interest @ 12,500/- per month and the amount advanced viz., Rs.8 lakhs is repayable after 180 months i.e. on 1-8-1987. The assessee utilised this amount in the construction of complexes. It would, therefore, be a capital expenditure and accordingly not an admissible deduction. Hence it is disallowed. .. Rs.1,50,000,,

6(i) Before me, the learned representative submitted as follows:

"9. The erstwhile firm M/s. Modi Builders took a loan of Rs.8,00,000 on a long term basis from Bhagwandas M.Parikh Family Trust and as per the Finance Agreement dated 1st day of July, 1982 interest of Rs.12,500 per month is to be paid. The amount of Rs.8,00,000/- taken from the Trust is utilised for the development of the property at Rasoolpura, the income whereof is being offered to tax year after year. The superstructure constructed over the leasehold lands do not belong to the lessee of land. The ownership of the super structure, brick by brick belongs to the owners of the land. The expenditure towards financiers consideration is expenditure incurred in the course of earning the income of the business and as such is to be allowed on Revenue count."

6(ii) It may be observed that the Assessing Officer conceded that the amount of Rs.8 lakhs was utilised in the construction of the complexes. His only objection is that it was an expenditure of capital nature. The so-called financier's charges are in the nature of interest payments. It is not clear how interest on borrowed capital can be regarded as capital expenditure. The expenditure is clearly allowable under the provisions of Sec.36. Actually,

Contd..11

the learned representative also filed before me a statement which shows that the rate of interest paid on this amount starts at a maximum of 37.5% in the first month and comes down to 18.75% in the 33rd month. It is claimed that as this is an advance without security and as commercial banks do not make advances for commercial constructions, the interest paid is quite reasonable. In these circumstances, I have to delete the addition of Rs.1,50,000/-. It is hereby deleted.

7. The next objection is to the addition of Rs.4,97,000/- as unexplained cash credits in the account of Sri Satish Chandra Modi. The addition is made with the following observations:-

"(3) Unexplained cash credits in the account of Sri Satish Modi:

Sri Satish Modi's account is credited with the following amounts for which the assessee has not been able to give any explanation.

<u>Date</u>	<u>Nature</u>	<u>Amount</u>
		Rs
6-2-1985	Cash	12,000
26-2-1985	"	50,000
9-3-1985	"	10,000
31-7-1985	LP Pitti (HUF)	3,00,000
31-7-1985	Kabhavlal Babubai	50,000
31-7-1985	Kalpana R. Shah	25,000
31-7-1985	Sangeetha Babubai	25,000
31-7-1985	Sajelban Babubai	25,000

		4,97,000

Contd..12

Except stating that these are transfer entries and that the other accounts are debited, the Satish Modi's account is credited, the assessee could not give any satisfactory explanation with evidence to prove that the credits are genuine. In the absence of any evidence to this effect, I shall hold that these credits are not genuine and in fact represent the concealed income of the assessee in the shape of on-money received from the lessees. This is accordingly added. .. Rs.4,97,000.,

7(i) On this, the appellant trust submitted vide its letter received on 14-3-1990 as follows:

"10. The appellant has a running account with Sri Satish Modi who is being assessed to tax by the Assistant Commissioner of Income-tax, Central Circle-I, Hyderabad. In the regular day to day to conduct of the business for expenditure incurred by Sri Satish Modi relating to the appellant, his account is credited and the corresponding debit is given to the respective accounts. In the accounts of five loan creditors repayment was made by Sri Satish Modi out of his individual funds and consequently his account in the books of the appellant is credited and the respective parties account have been debited. Account copy of the appellant in the books of Sri Satish Modi is enclosed. There is no question of any concealed income in the shape of 'on money' received from the lessees, which is being credited to the account of Sri Satish Modi. The addition of Rs.4,97,000/- is made without appreciating the correct facts and as such is to be deleted.,"

Apart from the above submission, the learned representative also filed before me a copy of the account of Sri

Contd..13

Satish Modi in the books of the appellant trust and also a copy of the appellant trust in the personal books of Sri Satish Modi. On cross verification of these two accounts copies, I find that the entries tally and there is no basis for the addition of Rs.4,97,000/- as unexplained cash credits. So, the addition of Rs.4,97,000/- is hereby deleted.

8. The next objection is to the addition of Rs.50,000/- as unexplained expenditure. The Assessing Officer made the addition with the following observations:-

"(4) Amount paid in cash of Rs.50,000/-

On 22-7-1985, an amount of Rs.50,000 was paid in cash and debited to Sri Satish Modi's account. When asked to explain, the assessee could not give any details about the payment, as to the nature and purpose. I shall, therefore, treat as the income of the assessee in the guise of unexplained expenditure."

8(i) Vide its letter received on 14-3-1990, the appellant trust submitted as follows:

"11. As stated supra, in the running account with Sri Satish Modi an amount of Rs.50,000/- is paid and debited to the account. It is not any expenditure incurred by the appellant and there is no scope of any addition being made in this respect as "unexplained expenditure". The addition of Rs.50,000/- is to be deleted. "

Contd..14

8(ii) It appears that the above addition is misconceived as the sum of Rs.50,000/- was a debit appearing in the account of Sri Satish Modi and it cannot be termed as unexplained expenditure in the hands of the appellant trust. The addition is hereby deleted.

9. The next objection is to the addition of Rs.75,000/- being the interest paid to creditors. The Assessing Officer made the addition with the following observations:-

"(5) During the previous year, the assessee debited to P&L account with an amount of Rs.4,68,268/- representing interest paid to creditors for their investment in the construction work carried on by the assessee. Apart from the cash credits amounting to Rs.4,97,000/- in the account of Sri Satish Modi, which were disallowed, for the reasons discussed above, there are further credits in the books of the assessee amounting to about Rs.18.25 lakhs. Almost all of them are assessed to Income-tax, even though the assessee did not file any confirmatory letters from the creditors. As such, I shall disallow the interest payment claimed, on the credits of Rs.4,97,000/- disallowed and added above @ 15% which works out to a round sum addition of Rs.75,000/- which is added.."

9(i) As I have deleted the addition of Rs.4,97,000/- there is no case at all for the disallowance of the interest of Rs.75,000/-. So, the addition is hereby deleted.

10. The next objection is to the addition of Rs.1,14,849/- being the developmental expenditure in respect of the Rasoolpura property. The Assessing Officer made the addition with the following observations:-

"(6) The assessee debited the trading a/c. with the following expenditure which is incurred in the construction work:

a) Misc. labour charges	1,486
b) Licence fee	64,800
c) Cartage & Coolee	1,651
d) Sundry purchases	36,413
e) Current	4,091
f) Payment to	6,408

	1,14,489

This is a capital expenditure and hence disallowed. .. Rs.1,14,489,,

10(i) Before me, the learned representative pleaded that as the superstructure belonged to the lessor brick-by-brick, the entire expenditure incurred in connection with the development of this property was of a revenue nature. In fact, it has been so held by the CIT (Appeals) in the appellant's own case for the asst. year 1983-84 and 1984-85. So, there is no basis for the disallowance of the above expenditure of Rs.1,14,489/- which has to be allowed as revenue expenditure. The addition of Rs.1,14,489/- is hereby deleted.

11. The next objection is to the addition of Rs.82,742 being the amount debited for taking over of the firm. The learned representative has explained that this was the debit balance appearing in the books of the erstwhile firm M/s. Modi Builders in the account of Sri Satish Chandra Modi. When the firm was dissolved and the business of M/s. Modi Builders by the appellant trust by virtue of dissolution deed dated 3-8-1984, it was agreed to write off this

amount of Rs.82,742/-. In other words, it was treated as the share of Sri Satish Chandra Modi in the goodwill of the firm M/s. Modi Builders. The learned representative could not explain as to how the appellant trust is entitled to treat this amount as its revenue expenditure. Admittedly, it was the amount due to Sri Satish Chandra Modi by way of his share of goodwill. So, obviously it is a payment of capital nature. It is true that the appellant trust took over the assets and liabilities of M/s. Modi Builders but the sum of Rs.82,742/- is not a liability of M/s. Modi Builders which was taken over by the appellant trust. It was a payment made to an erstwhile partner and as such, it is clearly on the capital account. The addition of Rs.82,742/- is hereby confirmed.

12. The next objection is to the disallowance of the interest payable to Sri Satish Modi of Rs.8,320/-. The learned representative explained that the appellant trust has two sets of account books. One set is for the business taken over from the erstwhile firm M/s. Modi Builders. The other set is in respect of the other transactions of the trust. There are separate financial accounts for both the sets and it is in the business set of account that there is a debit of Rs.8,319/- as interest paid to Sri Satish Modi. The learned representative explained that the appellant trust borrowed a certain amount from Sri Satish Modi in earlier years and with accumulated interests, it amounted to a sum of Rs.55,843/- as on 31-7-1985 which is reflected on the balance sheet of the appellant trust. It is claimed that the interest of Rs.8,319/- debited in the P & L A/c. is allowable as the amount borrowed from Sri

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Sri Satish Modi was invested in the erstwhile M/s. Modi Builders. In the light of the explanation offered, I am of the view that the interest of Rs.8,319/- may be granted. The ground is allowed.

13. The appeal is partly allowed.

Sd/-
(M.V.R. Prasad)
Commissioner of Income-tax(Appeals)-I
Hyderabad

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