Sri L.Raja Sekhar Reddy, IRB Asst.Commissioner of Incometak

## INCOMETAX DEFARTMENT

Name & address
of the assesses

Mathodist Complex, 1-10-72/2/3, Abids, Hydensbad.

D. GIR.NO.

\* PF 204

. Circle

: ACTICINÝ) 4 (1)%) Uyd.

4. Status

**្ទ**ាមក្រ

S. Assessment Year

e (Postimones

6. Whether resident:

- ៖ ស៊ូសភ
- 7. Mathod of accounting
- : merchantile

B. Previous vear

- : 1-4-94 to 31-3-1995
- 9. Nature of business
- : Jease vent etc

10. Dates of hearing

: 26-2-98, 6-3-98. 12-3-98, 18-3-98

11. Date of order

- : 01-3-1998:
- 12. Section and sub-section under
  - which the assessment is made : 143(3)

## ASSESSMENT ORDER

The assessee is a firm and has filed its Return of Income on 17-9-1996 admitting a loss of Rs. 4.80.825 as income from business. The neturn filed was processed U/s.143(1)(a) on 31-3-97. Later on in response to notice U/s.143(2) issued, the assessee's Authorised Representative Sri G.Bam Mohan. CA of M/s.Gandhi & Gandhi Co., CAs appeared and the case was heard.

The assessmentium is engaged in construction and teasing out the premises of Methodist Completes to Abids, Dyderabad. It receives lease rent from the because and maintenance charges also and balance portion of maintenance charges is met by the assessee to maintain the building. In other words, the assessee has got income from property, besides, the assessee is having share of profit from exploitation of feature film known as KHALNAYAK, which was run in success in 1993-94.

The assessee-firm while preparing the Profit & Account, has debited some expenditure on account of civil WC carried out during the previous year relevant to the Assistance and by filing a statement of total income, the income was treated as business income by the assessed finally, returned a net loss of Rs. 4.80,8252

I am not in agreement with the Lassessee's medicompilation of statement of total income, I am of the District the income/loss, if any earned by the assessee firm be treated as separately under the heads like, property income from business.

- assessee constructed a building, a viz., The let out the property to various people. Comb lex and The terant speing State Bank of Hyderabad. The assessee has entained an agreement with Methodist Church of India for developing the property and has lease rights to deal with the property. The assessee also collects maintenance charges from the tenants and undertake the responsibility for maintaining the building and incurs the maintenance expenditure. The assessee has collected maintenance charges towards/ the maintenance of the building The main source of income of the assessee from the said building the rental income, besides, maintenance charges. The assesse besides this income from Methodist Complex vizi, rental income or the lease rents realised and the maintenance charges realised and necessary expenditure thereon is also responsible for payment of municipal taxes and it has paid long-term lass rent Methodist Church of Indian This is a nature of ground the assssee has undertaken to exploit the building for to ta and has returned the rental income and is, therefore, beneficial owner of the income from property. The amount amount. ground rent and can be allowed as an expenditure from property income.

The assessee besides income from the above Methodi Complex has also got income from exploitation of a feature KHALNAYAK, since the assesses has advanced certain amounts Distributors/Producers of KHALNAYAK, for which, he received centain percentage of profit. This is an income from busines As this source of income from exploitation by feature kHALNAYAK has resulted substantial income to the assessee, 9988866 appears to have shown incomes arising ឋាពេលត SEVMM sources like, property, business income under the head susing income, so that the loss from one source can be set off positive income of another sounce. So that finally, he return only a small amount of income and reduce the income liability. The assesses appears to have treated income from all the sources as business income by clubbin together all receipts and debiting even the capital divil. construction cost incurred in respect of building construction F&L: account.

This method of accounting followed by the assessed pröpenty, busines various squrces of income like, stoeters under the head business income is not acceptable, to the Department and this method is adopted by the assesses to exad incometax on the profits emanating room other sources e property income, from business and income from other sources Therefore, the assessee's dethod of treating all the operations and all the sources as business income is hot acceptable. and all the sources as business income is similar view was already taken by the then Assessising Officers respect of assessment for Asst. Year 87-90 and 1994-95. Therefore following the then Assessing Officer's assessment order for 1990. I treat the income realised by the assessee from Methodi Complex as income from property and, therefore, the expanditue incurred during the relavent previous year towards cost cannot set off construction. of capital expenditure which cannot be allowed as deduction from property income. The Department has not accepted the contention in several other cases and treated the cost of construction: building in commercial complexes, wherein, the present out have entered into long-term agreements with the original design of the property and constructed the commercial building on own cost and let out to various tenants as property its Therefore, no relief/deduct/ion can be given to the inclusive of cost of construction, cost of/civil/work : by the assessee during the previous year relevants Most, year.

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property income the same has to be assessed under the head house property, there are misc. receipts also like, maintenance charge realised which also in my opinion realised to property income. The beneficial ownership of the building for the previous year levant to the assesses is entitled to the income from the sale property by virtue of its agreement with the Methodist Church of India and also by virtue of provisions of Sec. 27 of the IT Act In view of the above the assesses is treated as the owner of the property. Considering all the above discussions, and also basing on the reasoning in earlier assessment order on this issue in this case, the income realised from Methodist Complex at Abids is treated as property income and not business income.

funnt # Midd details **d**f nent manintenance charges collected from various tenents from list it is noticed that the assessee has collected maintenance charges from some tenents from some of whom the rents were not shown to have been collected and likewise there are certain tenents from whom only the rent was collected fand maintennace in charges were not collected. Further, it was noticed that the maintenance charges collected was much more than SOME CASES the rent collected. Further more, it is found from tatement that the rents collected from the various tenents Further more, it is found from this not uniform and particularly the rent collected from State Sank

of India the public sector bank is many times more than the rents collected from other tenents. This clearly shows that the assessee has charged the rents and maintenance charges without any basis as per its convenience. Therefore, the rent received and the maintenance charges received, are treated as the income from house property.

While working out the income from property the expenditure dehited to the P& L a/c attributable to the civil construction work is ignored. The expenditure on diesel, electricity & water charges to the extent of 50.% is treated as pertaining to the civil construction work and the balance is treated as reasonably 🕸 incurred towards the building maintainance.

The profit realised from feature with MHALNAYAK as business income. Therefore, the Assesses a to treated as business income. Therefore, the total? income from various sources is computed as under  $\| \mathbf{i} \|$ 

Froperty Income :

. Lease rent received: Less Lease Fent paid

Rs. 15,66,323 Rs. 14,40,000 c

Total

1,26,323 48,788

less: Municipal taxes

77,335

1/5 for repairs

15,467

61,968

Add: Maintenance charges received Rs. 3:47,766

less maintenance expenses

borewell maintainance 1,000 building maintenance 1,15,600

lift maintenance 16,500

mountenance empendes 22,348 可模curity charges Unit shavelly

50% of aten changes electricity

1.11111

diesel erpenses

ି ମ, ଧ୍ରତ

total expenses

Ps. 3,15,583

net property income

Business income :

Share of profit from EMACNOYAR

Other income.

Ba. 1,05,105 F:⊞.

income from other sources Interest on Fired deposit

FE. 1.01, 501

Tax thereon \_ 1,11,600

Add: 9ml . U/s. 230 # - 29,016 9n1. U/s.23418.80,312

1,09,368

Jun. Orepaid town 2,20,972 Taxo payable - 2,20,912

Encl: Chalin , DN & Penalty notice.

Copy to the assessee:

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