Sri C.V. Suryaprakash Rao, Asst. Commissioner of Incometax.

आई॰ टी॰ एन॰ एस॰-65 I. T. N. S.-65

INCOME-TAX DEPARTMENT

l .			ा नामः । ussessee	M/s.Modi.Builders. Methodist Complex.	6.	निर्धारण वर्ष	
2.	पता		• • • • • •	1-10-72/2/3,		resonant year	
	Add	ress		Abids,	7.	त्रया निवासी/निवासी किन्तु मामुली तौर पर निवासी नही/ अनिवासी	
				Hyderabad	•		
3.	FUI o	ेले ० स N./C	o/सा० स्ट	o रु सं o · · · · · · · · · · · · · · · · · ·			
			•	м-304	8.	8. लेखा विधि:	
1 .	वाडं _। Ward	/सर्कल/ I/Circl	रेज · · · · · e/Range	ACIT(INV) 4(1), Hy		Method of accounting	
5.	हैसिय Statu			Firm	9.	पूर्व वर्ष	
	(4t)			० है तो क्या करकी उच्च दर लागू		Previous year	
	(a)	•	•	gher rate of tax applicable?	10.	कारबार/कारवारों की प्रकृति	
	(a) (b)		म्पनी है तं mpany, w	hether	• • •	Nature of Business(es)	
		(i)	देशीं/अन्य Domestic	/Others	11.	25-3-97 & 26-3-97 मुनदाई की तारीख/तारीलें	
		(ii)	जनता का	नयांप्त रूप से हितवछ/जनता का पर्याप्त		•	
			_	बस् नहीं	12	आदेश की दारीय 26-3-1997	
		i 3	Public si substantia	ibstantially interested/Public not	12.	Date of order	
				गैर औद्योगिक /Non-industrial	12		
				/धारा 108 से भिन्न 8/other than section 108	13.	किस धारा तथा उपधारा के अधीन निर्धारण किया गया Section and sub-section under which the assessment is made.	
						143(3)	

निर्धारण आदेश ASSESSMENT ORDER

The assessee is a frim. The assessee filed its return of income, admitting an income of B.16,46,205/-, as per the return filed on 25-3-96. The return filed was processed u/s.143(1)(a) as per intimation dt.6-9-1996. Later on, in response to notice u/s.143(2) issued, the assessee's AR, Sri G.Ram Mohan, CA of M/s.Gandhi & Gandhi Co., CAs, appeared and the case was heard. The assessee's business premises was raided along with residential premises of Sri Suresh P.Bajaj, Sri Madan P.Bajaj and M/s.Siva Sakthi Enterprises on 4-5-94. During the course of search, declaration u/s.132(4) of the I.T.Act was obtained from Sri Suresh P.Bajaj, who is the MDs of Siva Sakthi Constructions(P)Ltd.

and who is also a partner in the assessee's firm. Originally, a statement u/s.132(4) was given on 4-5-94 by Sri Suresh P.Bajaj, before the ADI, Unit-I(3), Hyderabad, wherein, with reference to the seized material, viz., MBR/A/2 that in respect of premises of Methodist Complex at Abids, Hyderabad, which was sold to various parties/persons on money in Cash was received and such Cash portion, amounted to Rs.91 lakhs, out of which, Rs.10.55 lacs was spent by him and, therefore, he gave a declaration of Rs.80 lakhs in his individual Capacity before the ADI on 4-5-94. Later on, on 14-11-94, the same, Sri Suresh P. Bajaj again gave another deposition before the ADI, Unit-I(3), Hyderabad, wherein, a declaration of Rs.80 lacs was given on behalf of M/s.Modi Builders.

The assessee-firm filed a return of income on 25-3-95, admitting a total income of Rs.16, 46, 205/- as income from business. The P&L a/c for the year ended on 31-3-94 was enclosed to the return, as per which, there was a loss of B.71, 34, 835/-. The assessee-firm is engaged in construction and leasing out the premises of Methodist Complex at.Abids, Hyderabad. It received lease rent from the tenants and maintenance charges also and balance portion of maintenance charges is met by the assessee to maintein 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. In the P&L a/c, the assessee firm admitted as other income B. 80 lakhs which represents the income disclosed under Sec. 132(4) by Sri Suresh P. Bajaj on 14-11-94, before the The assessee-firm while preparing the PaL account, has debited the entire expenditure on account of wivil work, carried out, during the earlier previous years as well as during the previous year relevant to the AY 1994-95 and by filing a statement of total income, the entire income was treated as business income by the assessee and finally, returned \$3.16,46,205/-.

I am not in agreement with the assemble's wanks mode of compilation of statement of total income. I am of the opinion that the income/loss, if any, earned by the assesse-firm should be treated as separately under the heads, like, property income, income from business.

The assesse constructed a building, viz., Methodist Complex and let out the property to various people. The main tenant being, State Bank of Hyderabad. The assessee has entered into 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 lessee and undertake

the responsibility for maintaining the building and

incurs the maintenance expenditure. There is a receipts

/several

of maintenance charges redeived after maintenance charges incurred for maintaining the property. The main source of income of the assessee from the said building is the rental income, besides, maintenance charges. The assessee, besides, this income from the Methodist Complex, The asseviz., rental income or the lease rents realised and the maintenance charges realised and necessary expenditure thereom is also responsible for payment of municipal-taxes and he paid long-term lease rent to the Methodist Church of India. This is a nature of ground rent as the assessee has undertaken what to exploit the building for several years and has returned the rentwal income and, is, therefore, the beneficial owner of the income from property. The amount payable, if any, to the Church of India is in the nature of ground rent and can be allowed as am expenditure from property income. The assessee, besides, income from the above Methodist Complex has also got income from exploitation of a feature film, KHALNAYAK, since the assessee has advanced certain amounts to Distributors/Producers of KHALHAYAK, for which, he receives certain percentage of profit. This is an income from business. As this source of income from exploitation of feature film KHALNAYAK has resulted kusay shown incomes arising from/wkwar sources like, property, business income income the head business income, so that, the loss from one source can be off set against the positive income to another source. So that finally, he can return only a small amount of income and reduce the incometax liability. The assessee appears to have treated the entire income from all the sources as business income, by clubbing together all receipts and debiting even the capital civil works, construction cost incurred in respact of building construction in Pal account. This method of accounting borrowed by the assessee treating various sources of income, like, property, business and other sources of income under the head 'business income' and are only destarted version, with a view to evade Incomstax on the profits eminating from other sources of property income, from business and income from other sources. Therefore, the assessee's method of treating all the operations and all the sources as business incomes is not acceptable. A cimilar we-w was already taken by the them Assessing Officer in respect of assessment for AY 89-90. Therefore, following the then Assessing Officer's asst.order for 89-90, I treat the income realised by the assessee from Methodist Complex as income from property and, therefore, the expenditure incurred during the previous year towards cost of construction, viz., &.43,90,989.75 Ps. Cannot be offset property income since this is only civil work expenditure in the nature of capital expenditure which cannot be allowed as deduction in property income. The Department has also accepted such contention in several other cases and treated the cost se of construction of building in commercial complexes, wherein,

the present owners have entered into long-term agreements with the original owners of the property and constructed the commercial building on their own cost and let out to various tenants as property income. Therefore, no relief/deduction can be given to the assessee inclusive of &.43,90,990/- which is the cost of civil work incurred by the assessee during the previous year relevant to the AY 1994-95. Adually, the assessee has also debited the so-called P&L account for the AY 94-95 with the civil work opening balance at &.1,12,93,403 which is the expenditure claimed to have been incurred by him towards construction of building in previous years upto the perevious year ended 31-3-92 that means, upto and including fin.years 92-93. Even otherwise, this expenditure of &.1,12,93,403 is not relevant for the purpose of AY 94-95 and cannot be allowed at any cost irrespective of argument whether it is a nature of revenue or capital expenditure.

Since the main source of income is rental income or property income is to be assessed under the head 'house property', there are misc.receipts also, like, maintenance charges realised which also, '''' opinion," realised to property income. The beneficial ownership of the building for previous year relevant to the AY 94-95 is with the assessee. Therefore, the beneficial owner of the income from the said property by virtue of its agreement with the Methodist Church of India and by virtue of provisions of Sec.27 of the I.T.Act. The assessee is treated as owner of the property since a long-term agreement with the said Church. Considering all the above discussion, I treat the income realised from Methodist Complex at Abids as property income and not business.

The profit realised from feature film, KHALNAYAK is treated as business income.

The declaration of Rs.80 lakhs given at the time of search u/s.132(4), for which, seized material in respect of amounts collected outside the books of a/c and not disclosed the income by the assesses from various persons as per the seized material which amounts to Rs.91.20 lakhs (the assesses stated that he incurred an expenditure of Rs.10.25 lakhs out of this) is treated his income from besinger; for which, the assesses gave a declaration u/s.132(4) at the time of search. Therefore, the assesses total income from various sources is computed as under:

Property income :

Maintenance charges receivable,
Maintenance charges paid,
Lease rent,
Interest on borrowed capital, etc., should go into
property income.

Business income :

-) Property on sale of Car R. 37,744, which appears to have been used for the purpose of business.
- Share of profit from exploiting feature film, KHALNAYAK
- 3) Fricance obbear 4513=41 66 14 80,00,00 /- .

Declaration given by Sri Suresh P.Bajaj u/s.132(4) at B.80 lakhs, is also tremated as business income.

After discussion the facts of the case with the assessee's representative and having examined the details of various items of sources of income/expenditure gathered during the assessment proceedings, the total income of the assessment for the AY 1994-95 is computed as under:

COMPUTATION :	•	•
Income from Property :		
Lease rent realised	rs. 16, 67, 869	
Less: Municipal-taxes	Rs. 2,44,962	I s.
Gross income	ks.14,22,907	•
Less: 1/5th for repairs	B. 2,84,581	11, 38, 326
Deduct :		•
Maintenance Charges received	B. 2,85,182	
Maintenance charges paid	$8. \frac{2,71,899}{13,283}$	
Add: Lease rent	B.14,40,000	
Add: Interest	B. 1,98,908	16,52,191
Loss from prop	erty income (-)	5,13,865
Income from Business ;		
Profit on sale of car as retur	ned	37,744
Share of profit from KHALNAYAK	• •	10,88,215
Income offered u/s.132(4) at t	the time of	80.00.000
search Total busine	es income	80,00,000 91,25,959
to car postuc	ses Tucoma	34,43,333
COMPUTATION OF TOTAL INCOME :		Rs.
Income from property	•• (-)	5,13,865
Income from business.	9	1,25,959
Total taxable	income 9	1,25,959
Less: Brought forward losses textent of business income		4,84,055
Balance taxable in	come 6	6,41,904
Tax thereon:		
3 26,56,761 T	Total tan Dissable	Ns 53,44,495
	ley paid	4 17,00,000
9. J. 234 A 4 29,75,577	Balance Payache	No 36 66 695
7.W. 134 B 3 11.20, 690	And the second s	

This should be paid as per Demand Notice & Challan enclosed.

Penalty proceedings u/s.271(1)(c) initiated separately.

Copy to the assessee.