

IN THE OFFICE OF THE ~~ASSISTANT~~ ^{APPELLATE} COMMISSIONER

OF INCOME TAX. Appeals-III Range _____

Shri V.M. Muthuramalingam,
CIT (APPEALS)III, Hyderabad.

Date of Order : 19-10-1987
Income-tax Appeal No. 27 & 36/CC-I/CIT-III/86-87

Instituted on the 1-3-86 and 24-2-1987

From the order of the Income-tax Office of
ITO, CC-I, Hyd.
(Sri UVVS. Shyamsunder and
Sri Y.R. Rao)

- | | | |
|--|------------------------------|--------------------|
| 1. Year of assessment | 1983-84 | 1984-85 |
| 2. Name of the Appellant | Sri Satishchandra Modi, Sec. | |
| 3. Income assessed | Rs. 76,010/- | Rs. 4,398/- (loss) |
| 4. Tax demanded $\frac{\text{Income-tax}}{\text{Super-tax}}$ | Rs. 34,367/- | N.A. |
| 5. Section under which assessment was made | 143 (3) | |

Date of hearing 7-10-1987.
Present for Appellant Shri Anilkumar B. Vithlani, C.A.,

APPELLATE ORDER AND GROUND OF DECISION

from this property for the assessment year 1983-84 in the following manner.

Income from Business:

Own business:

Receipts	Rs. 1,84,782
<u>Less: Expenditure:</u>	
Licence fees	Rs. 1,20,000
Sundry expenses	254
Financiers consideration	12,000
Rasoolpura property development account	<u>1,81,060</u>
	Rs. <u>3,13,314</u>
	Rs. <u>1,28,532</u> (-)

2.2 The ITO did not accept the appellant's contention that its activity in developing the leased out property at Rasoolpura constituted a business activity. He was of the view that the intention of the appellant in leasing out the property was for the purpose of using it as a go-down or workshop for himself or his nominees. The appellant did not put up any new structure. Part of the land leased out was transferred to Modi Builders and Premier Switch-Gear Pvt. Ltd. The ITO was the view that the appellant exploited the asset to earn income. The decision of the supreme court in the case of Mercantile Corporation Pvt. Ltd. Vs. CIT. (83 ITP, 8700) relied on by the learned representative of the appellant, will not apply to the appellant's case. In that case the memorandum of articles indicated that the Company was formed for carrying out building activity in a sustained manner. In the appellant's case. Judging from the motive with which the property was taken on lease, it cannot be said that business was at the back of the appellant's mind. What was involved was mere sub-lease of the go-down. In this view, the ITO negated the appellant's claim that his activity in developing the leased out property at Rasoolpura constituted business activity and assessed the leased income from the go-down under 'Other Sources'. In fact the ITO did not allow deduction claimed by the appellant in Rasoolpura property development account (Rs.1,81,060/-) and sundry expenses (Rs.254/-) As for the assessment year 1984-85 the loss in property development account to the extent of Rs.1,490/- was disallowed by the ITO for the reasons stated in the MDN order for the assessment year 1983-84.

ITA NOS. 27436/C.C.I/CIT.III/86-87.

3. Before me, the appellant contends that the ITO failed to note that there was organised activity on normally accepted commercial lines in developing the property at Rasoolpura, that the ITO ignored Judicial Pronouncements to the effect that dealing in real estate, taking property on lease, setting up of go-downs and other commercial assets and leasing them out constituted business assessable under the head 'Profits and Gains of business or Profession': that merely for the reason that the appellant is an individual it cannot be said that there was no business activity in developing properties, that the ITO ignored the fact that the appellant had entered into agreement with M/s. Modi Builders and premier Switch Gear Pvt. Ltd., for exploitation of the property and that for these reasons the loss claimed by him under business should be accepted.

4.1 I have considered the reasons given by the ITO in support of his conclusion that the activity of the appellant in developing his leased out property at Rasoolpura did not constitute business activity and the submissions of the appellant thereon. In my view, the arguments of the ITO in support of his case is lacking in substance. The nature of activities carried on by the appellant in leasing out the land with an old useless structure in it, in making it a financially worthwhile and viable asset and in leasing it out to a tenant meeting his specifications and requirements certainly constituted a business activity. Right from the word go, the motive was business. That the appellant is an exploiter of properties and that such exploitation is being done in a sustained fashion is apparent from the fact that ~~XXXX~~ he has been a partner in firms engaged in development of real estate. The terms of the agreement with M/s. Investa Chemicals clearly indicates that it was up to the appellant to exploit the leased out land in a commercial way by improving the structures existing therein and by putting up new structures. After the agreement was entered into the appellant applied himself to the task of improving and renovating the existing structure, and for this purpose he went in for finance from Sharada Family Trust.

When the go-down took shape he got a prospective lessee for the same and structured the go-down and adjoining area so as to suit the requirements of M/s. Southern Roadways Ltd., who are cargo movers. Among other facilities, M/s. Southern Roadways Ltd., wanted the following from the appellant.

- a) Four new outlets for loading and unloading purposes.
- b) Cantilever extensions with A.C./G.C. sheeting to a length of 8'.
- c) Provision of Manager's room, Office Accounts Section, Stores and Rest Room with interval partitions.
- d) The whole built up area to have pucca C.C. Flooring.
- e) Toilet and bathing facilities to be provided.
- f) The open space surrounding the built up area to be strengthened so that, no slush forms during rainy season, rendering the operation of trucks, trailers etc., difficult.
- g) Sufficient number of electric light, fan, plug points etc., to be provided.
- h) Washing ramp (For washing vehicles).
- i) Cycle stand to be provided.
- j) Security room to be provided.

4.2 The appellant, incurring expenses to the extent of Rs.1,81,059/- completely renovated the existing building which formed part of a chemical unit. Even the surrender of 12,000 sq.ft. in favour of Premier Switch Gear Pvt. Ltd., and 27,000 sq.ft., to M/s. Modi Builders, was in tune with the object of the appellant viz., commercial use of the remaining area. I am also of the view that the reliance placed by the learned representative of the appellant Shri Vithilani on the decision of the Supreme Court in the case of S.G. Mercantile Corporation (P) Ltd., Vs, CIT. 83 ITR, 700 is very well placed. The ITO sought to distinguish this case with the facts of the appellant's case, stating that the appellant is an individual and does not have a memorandum, what has to be seen is the motive. There was clear and well defined commercial motive in first leasing out the property and next in developing it and in putting it to commercial use. In the case of S.G. Mercantile Corporation (P) Ltd., the facts are as under (from the head note).

*The appellant-company was incorporated in January, 1955.

One of the objects specified in its memorandum of association was to take on lease or otherwise acquire and to hold, improve, lease or otherwise dispose of land, houses and other real and personal property and to deal with the same commercially. Within less than two weeks of its incorporation the company took on lease a market place for an initial term of 50 years, undertaking to spend Rs. 5 lakhs for the purpose of remodelling and repairing the structure on the site. It was also given the right to sublet the different portions. The appellant's activity during the period covered by the assessment years 1956-57 to 1958-59 consisted of developing the property and letting out portions thereof as shops, stalls and ground spaces to shopkeepers, stallholders and daily casual market vendors. The question was whether the appellant's income from subletting the stalls was assessable as business income under section 10 of the Income Tax Act, 1922, or as income from other sources under section 12;

HELD (i) that since the appellant-company was not the owner of the property or any part thereof, no question of making the assessment under Sec. 9 arose;

(ii) that the definition of 'business' in section 2(4) was of wide amplitude and it could embrace within itself dealing in real property as also the activity of taking a property on lease, setting up a market thereon and letting out shops and stalls in the market;

(iii) that, on the facts, the taking of the property on lease and subletting portions thereof was part of the business and trading activity of the appellant and the income of the appellant fell under section 10 of the Act; and

(iv) that where, as in this case, the income could appropriately fall under Sec. 10 as being business income, no resort could be made to section 12."

The fact of the case in S.G. Mercantile Corporation (P) Ltd., being almost identical with those of the appellant the decision of the Supreme Court in this case squarely applies to the appellant.

4.3. In the case reported in 129 ITR, 295 the Supreme Court held that the word 'business' is one of wide import and that it means activity carried on continuously and systematically by a person by his application of labour and skill and with a view to earn income. In the case of

Distributors (Baroda) Pvt. Ltd., 83 ITR, 377, the Supreme Court observed that the real, substantial, systematic or organised course of activity of investment carried on by an assessee for a set purpose constitutes business activity. The expenditure incurred by the appellant in development of a property is expenditure incurred by him in the course of carrying on his business activity viz., development of the property, with a view to exploit it commercially. It has to be noted that the lease agreements stipulated that after the period of lease was over, all the structures built & up by the appellant would belong to the lessor. Therefore, the appellant had no permanent or lasting interest in the structures he had put up. In the case of Bombay Steam Navigation Co., (P) Ltd., 56 ITR, 52 the Supreme Court held that if an expenditure is so related to carrying on or conduct of business, that it may be regarded as an integral part of profit earning process, then such expenditure is revenue in nature. For these reasons I hold that the project undertaken by the appellant in developing the leasehold property at Rasoolpura was in the normal course of his business activity, that it cannot be construed as an isolated activity of investment, that the expenditure incurred by him in the course of development of the property construed expenditure incurred in making the profit-earning apparatus workable, that this expenditure is revenue in nature and that therefore, the loss claimed by the appellant in property development account for both the assessment years 1983-84 and 1984-85 has to be allowed and dealt with as per law.

Appeals allowed.

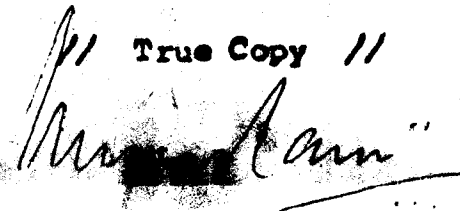
Copy of the Order Forwarded to

1. Appellant with D.Ns (2)
2. I.T.O. with records
3. CIT. A.P. Hyderabad
4. IAC. of Income tax

Sd/-
Commissioner of Income Tax
(Appeals) III, Hyderabad.

Sd/-
(V.M. MUTHURAMALINGAM),
Commissioner of Income Tax
(Appeals) III, Hyderabad.

True Copy //



IN THE OFFICE OF THE APPELLATE
ASSISTANT COMMISSIONER

OF INCOME TAX.

Range Hyderabad

Shri V.M. MUTHURAMALINGAM
Commissioner of Income Tax
(Appeals) III,

Date of Order: 4th August, 1988

Income-tax Appeal No. 154/C.C.I/CIT.III/87-88

Instituted on the 28-12-1987

From the order of the Income-tax Office of ITO C.C.I, Hyd.
(Shri U.V.V.S. Shyamsundar)

1. Year of assessment 1983-84
2. Name of the Appellant Shri Satishchandra Modi,
Secunderabad
3. Income assessed Rs.57,670/-
4. Tax demanded $\frac{\text{Income-tax}}{\text{Super-tax}}$ Rs.664/- (Penalty)
5. Section under which assessment was made under Sec. 271(1) (a) of the Act.

Date of hearing 3rd August, 1988

Present for Appellant Shri Anil Kumar B. Vithani C.A.

APPELLATE ORDER AND GROUND OF DECISION

ITA. No.154/C.C.I/CIT.III/87-88.

The appellant is a Hindu Undivided Family. Its main source of income is share income from the firm of M/s. Meera Industries, Secunderabad. It follows financial year as its previous year. Its return for the assessment year 1983-84 was due on 31-7-1983. However, it was filed on 7-12-1983. Hence the ITO levied penalty u/s. 271(1) (a) which is objected to in this appeal. The appellant's explanation for the delay is that the firm of M/s. Meera Industries itself, filed its return of income on 31-10-1983.

..... 2.

2. I have considered this explanation. The appellant cannot be expected to file its return before the firm filed its return. However, the appellant could have filed its return sometime in November, 1983 since the share income was available by the end of October, 1983. When this was pointed out, the learned representative of the appellant submitted that November happened to be Diwali month and that return was filed in the first week of December, 1983. There was only one calendar month of delay after the availability of share income. This delay is very inconsequential. In this view, I hold that there is no case for levy of penalty under Sec. 271(1) (c) of the Act in the appellant's case.

Appeal allowed.

Sd/-
(V.M. NUTHURAMALINGAM)
Commissioner of Incometax
(Appeals) III, Hyderabad.

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PROCEEDINGS OF THE INCOMETAX OFFICER, CENTRAL CIRCLE (HYDERABAD).

Sri Y.R. Rao, I.R.S.
Income-tax Officer.

No. S-704/C.C-I.

Dt. 18-11-1987.

Sub:- I. T. Asst. Asst. Year: 1983-84 --- Sri Satishchandra Modi,
1-10-72/2/3 Begumpet, Secunderabad --- Issue of
Modification Order --- Regarding.

Ref:- C.I.T.'s A) III Hyderabad, Appeal No. 27/C.C-I/CT-III/
18-87 dt. 19-10-'87.

Consequential Order:-

Consequent to the relief allowed by the Commissioner of
Income-tax, Appeals (III) Hyderabad, Vide Order No. 7/CC-I/CT-III/86-87
dt. 19-10-'87, the assessment for the Asst. Year: 1983-84 stands modified
as under:-

		Rs.
<u>Income from Property:</u>		
1/3rd Share in Co-ownership property in Balasara		200
<u>Income from Business: (Own Business)</u>		
Receipts.	1,84,712	
<u>Less:-</u>		
Licence Fees. ..	1,20,000	
Financiers Consi- deration. ..	12,000	
Rasoolpura Property Development A/c. (Allowed by CIT (A) III) ..	1,81,060	
	<u>3,13,060</u>	(-) 1,28,278
25% Share Income from P/s. Meera Industires, adopted provisionally subject to rectifica- tion U/s. 155. ..		29,771
50% Share Income from P/s. S.M. Modi Commercial Complex, adopted provisionally subject to rectification U/s. 155. ..		6,078
		<u>(-) 92,429</u>
Add:- Interest Payments.		16,129
		<u>(-) 1,08,558</u>
Dividends. ..	2,071	
Interest receipts ..	2,000	
Amounts included U/s. (i) as declared. ..	(-) 580	
		<u>3,511</u>
Net loss. ..	11-	<u>(-) 1,04,847</u>

--- Declared U. A. ---

(Y.R. Rao)
Income-tax Officer,
Central Circle-I: Hyderabad.

Copy to the Assessee.

20/11/87