

Settlement Commission
Order

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)
SETTLEMENT COMMISSION (IT & WT)
ADDITIONAL BENCH, 488-489, ANNA SALAI, MADRAS.600 035.

PROCEEDINGS BEFORE THE ADDITIONAL BENCH OF THE INCOME TAX
SETTLEMENT COMMISSION, MADRAS.

Miscellaneous Application No. : 12/C/250/84-IT
Date of filing of the application : 3-8-1992.

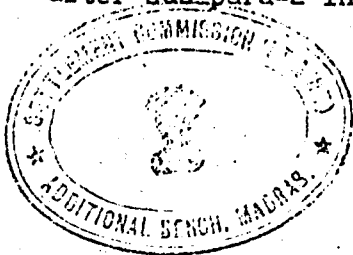
1. Full name and address of the applicant. : M/s.Meera Industries, 5-1-513, Hill Street, Ranigunj, Secunderabad.(A.P.)
2. Status : Registered Firm
3. Permanent Account No. : M-302
4. Commissioner having jurisdiction : C.I.T., Andhra Pradesh-I
5. Assessment year(s) to which the application for settlement relates : 1980-81 to 1984-85
6. Date of order : 10th August, 1992

Miscellaneous Order

The applicant filed an application under section 245C of the Income-tax Act, 1961 on 25-5-1984 which was allowed to be proceeded with under section 245D(1) of the Income-tax Act, 1961 on 11-8-1986. The case was heard on 11-5-1992 and 12-5-1992 at Madras and order under section 245D(4) was passed on 03-6-1992.

2. The applicant has submitted a miscellaneous petition dated 31-07-1992 on 03-08-1992. In the petition, the applicant has sought, on the basis of the discussion during the hearing under section 245D(4) of the case, for the issue by the Commission of a supplementary order to the effect that the restructured balance sheet as on 31-03-1984 submitted before the Commission by the applicant be taken as correct and the capitalisation of cash accrual on the sale of scrap be allowed.
3. The applicant's prayer has been considered. The point raised in the petition is found to be correct. The following amendment is therefore effected to our order under section 245D(4) dated 03-06-1992 by insertion of sub para-3 immediately after sub para-2 in para-6 of the order.

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"6.3. On a request made by the learned counsel for the applicant, we wish to state that we have accepted the restructured balance sheet as on 31-03-1984 filed in the paper book on 05-05-1992 as reflecting the correct state of affairs of the applicant as on that date. The result is that a sum of Rs. 5,47,079/- appearing in this balance sheet under the caption "cash accrual for sale of scrap" will be taken as forming part of the assets of the applicant as on 31-03-1984".

Sd.

Sd.

(S.M. CHICKERMANE)
MEMBER.

(K. RANGARAJAN)
MEMBER.

Endorsement of orders.

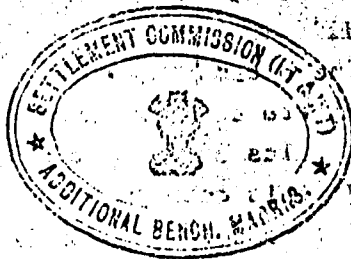
F.No. 12/C/250/84-IT

Dated: 14th August, 1992.

1. The applicant.
2. The Commissioner of Income-tax, Andhra Pradesh-I, Hyderabad.
3. The CIT (DR), Madras.35
4. The Director of Income-tax, Madras.35.
5. The Assessing Officer - Assistant Commissioner, of Income-tax, Circle I(2), Hyderabad.
6. The Secretary, Addl. Bench, Madras.35
7. Guard file.

(SMT. INDIRA BHARGAWA)
SECRETARY

Settlement Commission (IT & WT)
Additional Bench,
Sathguru Complex, 488-489,
Anna Salai, Madras 600 035.



871/MT
14/8/92

MI. (1)

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
SETTLEMENT COMMISSION (IT&WT)
ADDITIONAL BENCH
488-489, ANNA SALAI, MADRAS - 600 035.

PROCEEDINGS BEFORE THE ADDITIONAL BENCH OF THE INCOME TAX
SETTLEMENT COMMISSION, MADRAS.

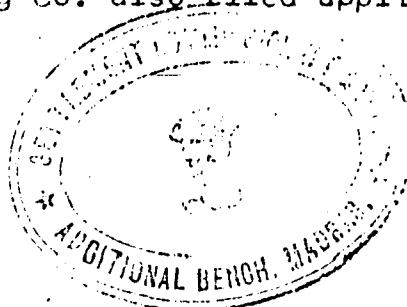
Settlement Application No. : 12/C/250/84-IT

Date of filing of the application : 25.05.1984.

1. Full name and address of the applicant : M/s.Meera Industries,
5-1-513, Hill Street,
Rani Gunj, Secunderabad.
2. Status :: Registered Firm.
3. Permanent Account No. : M-302
4. Commissioner having jurisdiction : Commissioner of Income-tax,
Andhra Pradesh-I,
Hyderabad.
5. Assessment year(s) to which the application for settlement relates. : 1980-81 to 1984-85.
6. Present for the applicant : Shri G.Sarangan, 'Advocate.,
Shri Ajay Mehta, C.A.
Shri Mahesh Desai.
7. Present for the Department: Shri A.C.Chandra, CIT(DR)
Shri Yashwant U.Chavan,
ACIT, Circle I(2), Hyderabad.
Shri K.Vaidyanathan, ACIT(DR).
8. Settlement Commission's Officers : Mrs.Indira Phargava, D.I.
Shri D.Ravindran. D.D.I.
9. Date & Place of hearing : 11-05-92 and 12-05-92
Madras.
10. Date of order : 3-6-1992.
11. Section under which the order is passed. : 245D(4) of the Incometax
Act, 1961.

ORDER

The applicant is a partnership firm. Its application u/s.245C was allowed to be proceeded with u/s.245D(1) on 11-08-1986. Its allied concerns viz. M/s.Patel Desai & Co. and M/s.Gurudev Engineering Co. also filed applications u/s.



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245C, which were also allowed to be proceeded with. All these three concerns deal with manufacture and sale of deep well hand pumps. These pumps are sold mainly to State Governments for their rural water supply scheme. As a result of action initiated u/s.133-A in this case and in the case of M/s. Patel Desai & Co., the Assessing Officer found discrepancies in the stock statements and certain omissions relating to purchases and sales. This prompted the applicant to file the application u/s.245C. For the assessment year 1980-81, assessment had been completed and appeal against the assessment order was pending, before the CIT (Appeals) whereas for the assessment years ¹⁹⁸¹⁻⁸² 1982-83, 1983-84 and 1984-85, assessments were pending on the date of the application.

2. The report of the CIT u/s.245D(1) has been received. During the hearing, the applicant was represented by Shri G.Sarangan, Advocate, and the Department by Shri A.C.Chandra, CIT(DR).

3. It was admitted in the "statement of facts" by all the three concerns that their books of account do not reflect the correct state of affairs, and no proper stock account was maintained by them. There was a common godown to store the raw materials and the component parts. Whenever there was a shortage of a required component in any one concern, such shortage was met by taking the component from another concern in their group, which had excess of these goods. However, such transfers of components (referred to as 'barter' purchases/sales by the applicant) were not recorded in the books of account. While filing the "statement of facts," the applicant filed a revised trading account by bringing into account the barter purchases and barter sales. The value of opening and closing stock was not taken into account in the revised trading account, since according to the applicant, the actual position of stock was not ascertainable. Instead, the applicant reworked the cost of production of the output in each year on the basis of cost analysis prepared by the Small Scale Industries Department, on a study of this industry. The applicant estimated the approximate cost of production of each product (such as pumps, cylinders, connecting rods) including labour charges. While

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working out the cost of production, the applicant included some miscellaneous expenses incurred during manufacturing, including an element of secret commission. The applicant also declared sale of scraps and raw materials in the revised trading account. On a perusal of the revised trading accounts for the five years concerned, we find that there was a wide variation in the percentage of gross profit on sales from year to year. It was also seen that in the case of the sister concern viz. M/s. Gurudev Engineering Co., the method followed in filing the revised trading account was different in the sense it did not estimate the cost of production. In that case, the applicant had shown opening and closing stock on the basis of the various registers and documents maintained by them. The applicant was therefore asked why it was not possible to recast the trading account in the way they had done in the case of M/s. Gurudev Engineering Co. Accordingly, the applicant filed on 05.05.92 restructured trading, profit and loss account and balance sheet for all the five years in their Paper Book (APB-I). In these trading accounts, purchases and material possessing were adopted as per books maintained and only the opening and closing stock were revised. Thus, the material difference between the restructured trading account filed in APB-I and the revised trading accounts filed with the SOF was that in the restructured trading account, cost of manufacturing was not estimated, as had been done earlier in the revised trading account. The particulars of income as disclosed in the returns of income, computation of income as per the revised trading accounts filed with SOF and income computed as per restructured trading accounts, (APB I), which are as follows:

Asst. Year	Income as per return Rs.	Income as per SOF Rs.	Income as per APB. Rs.
1980-81	1,20,140	1,36,074	4,91,198
1981-82	Nil	24,022	9,08,368
1982-83	1,28,034	6,96,669	92,044 (-)
1983-84	1,78,288	2,37,703	3,51,674 (-)
1984-85	3,35,000	2,50,478 (-)	1,06,518
	<u>7,61,462</u>	<u>8,43,990</u>	<u>10,62,366</u>

4. It was explained during the hearing by Sri Sarangan



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that barter purchases and sales which were taken into account in the restructured trading account are on the basis of the cost. Therefore in arriving at the gross profit for the different years, it is possible to exclude barter sales. The gross profit percentage on sales (including sales of scrap and raw materials now disclosed) in different assessment years is as follows:-

Particulars	1980-81 Rs.	1981-82 Rs.	1982-83 Rs.	1983-84 Rs.	1984-85 Rs.
Sales	33,44,713	52,97,302	54,61,518	55,34,690	66,29,223
Sale of scrap	58,210	52,901	53,955	51,846	61,593
Sale of raw material	Nil	Nil	Nil	Nil	1,91,877
Total sales	34,12,923	53,50,203	55,15,473	55,86,536	68,82,693
Gross profit	10,23,835	16,59,876	8,28,148	5,28,394	15,68,526
Percentage of Gross profit	30%	31.02%	15.01%	9.46%	22.79%

5. It was explained during the hearing to the applicant's counsel that the gross profit disclosed in assessment years 1980-81 and 1981-82 was fair whereas for other years, there was a sharp decline and the reasons for this sharp decline in gross profit were called for. However, no cogent reasons were advanced. Shri Chandra submitted that the applicant had admitted in the statement of facts that the book results did not reveal the correct state of affairs and hence the gross profit has to be estimated on a reasonable basis. As per the restructured trading accounts, the gross profit is about 30% and 31% in the assessment years 1980-81 and 1981-82. Having regard to these facts, he stated that gross profit may be estimated at any percentage between 23% and 30% for assessment years 1982-83, 1983-84 and 1984-85. After considering all the facts and circumstances of the case, we felt that gross profit percentage of 25% for these years would be fair and reasonable and accordingly direct that the gross profit may be computed on the basis of 25% gross profit on sales including sales of scrap and raw materials,

...5/-



but excluding the barter sales.

6.1. In the report of the CIT dated 07-05-92, he requested that the secret commission payments claimed by the applicant as a deduction should be disallowed and secondly 10% of the labour charges claimed on miscellaneous expenses as estimated should also be disallowed, since proof of the genuineness of the expenses claimed has not been furnished. Shri Chandra during the hearing also reiterated the points raised by the CIT in his letter dated 07-05-92. However, it was pointed out to him that these remarks were made by the CIT on the basis of the revised trading accounts filed with the SOF, but (as pointed out earlier) in the restructured trading account filed just before the date of hearing, the method followed was different in the sense that no estimate of manufacturing cost was made, which had an element of secret commission embedded in it and miscellaneous expenses had been claimed therein for labour on estimate basis. Since the restructured trading account has not relied upon the estimate of manufacturing cost, and since it was decided to compute the applicant's income on the basis of the restructured trading accounts, the Commissioner's remarks are not relevant.

6.2. In the assessments made, for assessment year 1980-81 before the date of the application and in the assessment year 1981-82 after the date of the application, the Assessing Officer had made certain additions to the income on various grounds. The applicant's counsel filed detailed reasons why these additions are not justified. After going through the explanation offered, we find that there is no case for making these additions to the income except that for the assessment year 1980-81, an amount of Rs.19,873/- requires to be added on account of inflation of purchases. Wherever section 40A(3) is attracted, it is seen that rule 6DD(j) is applicable and hence no addition is called for under this section.

Transaction relating to Rasoolpura property
in Secunderabad:

7. On 01-01-1984, the applicant entered into an agreement with the owners of a plot of land situated at

.....6/-

Rasoolpura in Secunderabad. The owners belonged to what is called Seth Group. According to this agreement, the owners agreed to allow the applicant to develop the said piece of plot and to construct on it buildings or structures for being used for any purpose as may be permissible under the law. Some of the important terms and conditions of the agreement are as follows:-

- (i) The cost of construction of the structures on the plot shall be borne by the applicant. However, such construction shall be deemed to have been carried out on behalf of the owners.
- (ii) As and when construction is put up and is under progress, the same shall belong to and form part of the property of the owners.
- (iii) The applicant will not have any claim or proprietary rights in regard to such structures.
- (iv) The applicant will pay the owners compensation calculated at the rate of 15 paise per square foot per month of the area of construction that may be put up by the applicant.
- (v) The agreement will be operative for a period of 11 years from 01-01-1984.

8. The applicant put up some structures on this plot, during the previous year relevant for the assessment year 1984-85, which were subsequently let out on rent. According to the applicant, this was a business of developing real estate and in subsequent assessment years, the rent received from these structures was declared as revenue receipts and any expenditure incurred on further construction or development of the property was also claimed as revenue expenditure. The expenditure incurred on putting up the structures in the previous year for the assessment year 1984-85 amounting to Rs.3,44,817/- is claimed as revenue expenditure incurred towards development of the property on the ground that:

- (i) the expenditure was incurred in the course of its business as a developer and under the agreement with the owners of the plot, it had no right of ownership over the superstructures it had built.



(ii) By incurring the expenditure on the superstructures, no asset was brought into existence in the hands of the applicant, as the ownership of the structures vested with the lessors of the land.

(iii) Since no ownership of the superstructure vested with the applicant, the expenditure incurred on them cannot also be taken as a stock-in-trade.

9. Shri Sarangan contended that by virtue of the agreement, the ownership of the superstructures built on the land, vested with the lessors and thus no asset or any benefit of enduring nature had come into existence as a result of the expenditure incurred. Therefore, the expenditure incurred should be treated as revenue expenditure incurred for the purpose of applicant's business as a developer of immovable properties. He relied upon the following cases in support of his contention:

95 ITR	428
156 ITR	740
172 ITR	257
186 ITR	276

10. Shri Chandra contended that the cases cited by Shri Sarangan are distinguishable from the facts before us. In those cases, a business was being already carried on and during the course of such business, some expenditure was incurred by the assessee, which was held to be not in the nature of capital expenditure by the courts. However, in the present case, Shri Chandra submitted, the applicant who was carrying on business of manufacturing handpumps started a new business or a venture in the nature of business in developing and exploiting an immovable property. In the cases cited by the applicant's counsel, the principle laid down by the Supreme Court in *Empire Jute Co. Ltd. Vs. CIT* (124 ITR 1) was followed, which stated that "if the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct

....8/-



of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future." He also pointed out the principle laid down by the Supreme Court that "what is an outgoing of capital and what is an outgoing on account of revenue depends on what the expenditure is calculated to effect from a practical and business point of view rather than upon the juristic classification of the legal rights, if any, secured, employed or exhausted in the process".

11. Shri Chandra then took us through the decision of the Andhra Pradesh High Court in Taj Mahal Hotel Vs. CIT (66 ITR 303). In this case, the assessee carrying on hotel business, took a fresh lease of a hotel building for 10 years. Under the lease deed, the assessee was given liberty by the lessor to make any alterations or new constructions with the permission of the lessor. On termination of the lease, the assessee was to take away fittings and fixtures like fans etc. while the structures would remain the property of the lessor. During the accounting year 1956-57, the assessee put up new rooms in the hotel building incurring an expenditure of Rs.60,000/- and claimed it as a revenue expenditure. On these facts, the High Court in its judgment referred to the case of Boyce (H.M. Inspector of Taxes) vs. Whitwick Colliery Co. Ltd. (1934) 18 Tax Case 655 and the observation made by Romer L.J. that "a taxpayer can make a capital expenditure upon the land of a third party; it is, none the less a capital expenditure even if it is upon the land of a third party and not upon his own land". The High Court also discussed some other foreign cases wherein under the agreement the lessee put up certain constructions on the land belonging to the lessor and referred to the observation of Lord Greene in Henriksen vs. Grafton Hotel Ltd. viz. "if a payment is of such a nature as to preclude its deduction when made spontaneously, I cannot see that its nature is affected by reason of the fact that it is made under a covenant with a third party. Capital improvements are often made under a covenant in a lease.

.....9/-



I have never heard it suggested that the cost of making them can be deducted by the lessee in computing his profits for income tax purposes". Shri Chandra also referred to the observations made by the High Court to the effect that enduring benefit does not mean everlasting benefit.

Thereafter he relied upon the Delhi High Court decision in 125 ITR 781 - Hotel Diplomat Vs. CIT, in which the assessee had taken a building on lease for an indefinite period. Under the lease agreement, any structural alterations or additions were to become the property of the owners. The assessee incurred expenditure of Rs. 3,261/- for construction of additional bath rooms in the building taken on lease. The assessee had let out the rooms in the building to an embassy. While determining the income, the assessee claimed the expenditure as a revenue expenditure. It was held by the High Court that the expenditure incurred was of a capital nature. Shri Chandra pointed out that in this case the Delhi High Court has referred to the Supreme Court decision in Assam Bengal Cement Co. Ltd. Vs. CIT (27 ITR 34) to the effect that the expression "enduring advantage" does not mean a perpetual or everlasting advantage and further that the High Court has referred to the two decisions relied upon by Shri Sarangan viz. 95 ITR 428 and 96 ITR 650, which later on went to the Supreme Court, whose judgement was cited in 172 ITR 257.

12. In his rejoinder, Shri Sarangan contended that the applicant had not started any new business venture and no additional organisational set up was necessary for the purpose of developing the immovable property. The business of manufacturing handpumps and development of immovable property was carried on under the same capital head and there was unity of control, dovetailing and inter-connection within the two activities and therefore these two activities should be construed as one and the same undertaking. He also referred to the cases cited on page 878 of the commentary of Kanga & Palkhivala, Vol. I in support of his contention.

13. In order to appreciate the point involved in the case before us, it will be useful to go through the facts in the cases cited by the applicant's counsel. In C.I.T. Vs. T.V. Sanyal & Sons (95 ITR 428) the assessee

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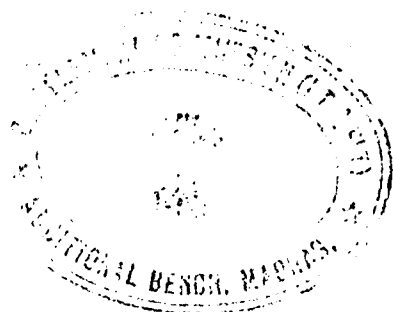
purchased land in the name of the District Collector for the purpose of constructing houses for the company's workers by the Government under a subsidised industrial housing scheme sponsored by the State Government and claimed a sum of Rs.39,696/-, being the purchase price of the land as a deduction u/s.10(2)(xv) of the Indian Income-tax Act, 1922, as being in the nature of welfare expenses. The High Court took note of the fact that according to the agreement reached between the representatives of the employers (including the assessee), the employees and the Government, the assessee had to contribute a certain amount towards the housing scheme and this agreement created an obligation on the assessee to incur similar expenses every year and therefore it could not be said that the expenditure had been incurred once and for all the time. The High Court also observed that from a reading of the section, there was an element of compulsion in the matter of provision of houses to the workers and that the company had no interest in the buildings to be built on the land. The assessee's obligation was over by contributing its share towards the scheme. On these facts, the High Court held that the expenditure was incurred wholly and exclusively for the purpose of the assessee company and that it had not acquired for itself any capital asset and by incurring the expenditure, it did not acquire any advantage of enduring benefit. This case was also discussed by the Delhi High Court in the case relied upon by Shri Chandra 125 ITR 781. After narrating the facts, the Delhi High Court pointed out that the expenditure incurred by the company was nothing more than a mere contribution by the company to a scheme of the Government which had been drawn up for the benefit of the employees and it was in this circumstance it was held that the expenditure could not be treated as capital in nature. The second case relied upon by Shri Sarangan was CIT Vs. Associated Cement Companies Ltd. 172 ITR 257, which had earlier been disposed of by Bombay High Court in CIT Vs. ACC-96 ITR 650. In this case, the assessee was running a cement factory at Shahabad. The Government included the factory premises within the limitation of Shahabad municipality. A tripartite agreement was entered into between the Government, the municipality and the assessee whereby the assessee undertook

....11/-



(i) to supply water to the municipality and provide water pipelines (ii) to supply electricity for street lights in the municipality and (iii) to concrete the main road from the factory to the railway station. In return, the assessee was not liable to pay municipal rates and taxes for a period of 15 years. During the relevant assessment year, the assessee spent about Rs.2 lakhs towards installing water pipelines and accessories outside the factory premises, which were to belong to and be maintained by the municipality. The Bombay High Court on a reference (96 ITR 65) held that the expenditure was revenue in nature. On appeal, the Supreme Court held that since the installations and accessories were the assets of the municipality and not of the respondent, the expenditure did not result in bringing into existence any capital asset for the company and that the advantage secured by the assessee by incurring the expenditure was absolution or immunity from liability to pay municipal rates for a period of 15 years. If these liabilities had to be paid, the payments would have been on revenue account and therefore the advantage secured was in the field of revenue and not capital. The Delhi High Court in Hotel Diplomat Vs. CIT 125 ITR 781 relied upon by Shri Chandra, also discussed this case as decided by the Bombay High Court in 96 ITR 650, and distinguished it from the facts before them. —The High Court pointed out that in the ACC's case, the expenditure was allowable as a deduction, because by incurring it, the assessee had obtained avoidance of certain disadvantages for a limited period, namely, 15 years and that the expenditure was made for the convenience and economic running of a business during the period of the agreement and that the object of the expenditure was not to acquire any asset, but to avoid the disadvantage to the business that was being faced. The last case relied upon by Shri Sarangan is CIT Vs. Madras Auto Service Ltd. 156 ITR 740, in which the assessee had taken on lease, land and building for housing its main office. The building was rather old. The assessee entered into an agreement with the lessor whereby the assessee

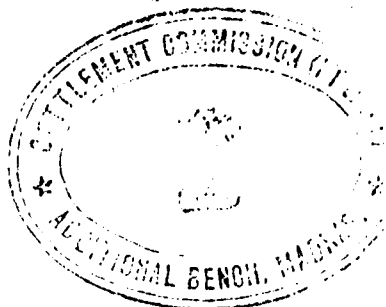
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agreed to demolish the building and construct a new one and as consideration for this the lessor agreed to take a very low rent of Rs.1,000/- per month and Rs.2,000/- for the last four years of the lease. The lease was to extend for thirty nine years. The prevailing rent in the area would have worked out to Rs.12,000/- per month. The assessee spent Rs.1.62 lakhs and Rs.51,000/- respectively in two assessment years and claimed them as revenue expenditure. The High Court stated that the terms of the agreement and the circumstances of the case clearly showed that the assessee had entered into the agreement only because of the obvious savings in rent charges. No tangible asset came into existence as a result of the amount spent by the assessee in demolishing the old building and constructing a new one. The expenditure incurred would more appropriately be regarded as loss incidental to the business and deductible as such.

14. In the light of the above discussion, it is seen that in the cases relied upon by the applicant's counsel, there was already a business in existence and certain expenditure was incurred either under a scheme or an agreement to facilitate its carrying on the business in an improved manner. However, in the case before us, the business of the applicant was manufacturing of handpumps and during the assessment year 1984-85, it started a new business venture of developing an open plot of land as a commercial complex by constructing some structures on it. Thus the applicant incurred the expenditure to exploit the land taken on lease to commence a new income earning activity which had no connection with the existing business. In the cases cited by the applicant's counsel, the expenditure was not incurred to create an asset for an income earning activity; it was only an expenditure incurred in the course of an existing business either to remove a disadvantage or to improve the profit making apparatus. We therefore find that the cases relied upon by Shri Sarangan are distinguishable from the case before us and that the cases relied upon by the CIT(IR) would cover the present case. We may also observe with reference to the arguments advanced by Shri Sarangan regarding unity of control, inter-linking and dovetailing of different business activities

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to constitute one single business, that these cases arose as a result of the application of the provisions of Section 72 in setting off the loss of one business against the income from another business and so on and not on the question of deciding the issue of any expenditure in the nature of capital or revenue. In the present case, the applicant started a totally new business venture and merely because no separate organisation was required for this purpose, it does not lead to the conclusion that it was a part and parcel of the original business of the applicant namely manufacturing of handpumps. It would be worthwhile to refer to the observations made by the Madras High Court in CIT Vs. Blue Mountain Estates and Industries Ltd. (151 ITR 616) wherein the assessee who was originally carrying on business of tea acquired coffee plantations later and began dealing in coffee, and thereafter it started fertilizer business. The question before the High Court was whether all these activities formed one business or different businesses. The High Court observed as under:

"No doubt the test of unity of control is established in this case as the finances and the control were from the head office of the company. To find out whether there is interconnection, interlacing and interdependence, we have to see whether the goods dealt with by the assessee in one business could be treated as one of the commodities in which the company dealt in the ordinary course of business. At the time, when it took up the manufacture of fertilizers, it was already carrying on business in coffee and tea. Therefore, the new business undertaken by the assessee cannot be taken to have any connection with the earlier business in tea and coffee except that it was carried on by the same company, namely, the assessee".

15. Considering all the facts and the case law, we hold that the applicant started a new business venture of exploiting an immovable property and the expenditure incurred in putting up structures on the land was for the

purpose of commencing a new income earning activity and hence the expenditure cannot be allowed as a revenue expenditure, against the income from the business of manufacture and sale of handpumps.

Directions regarding interest and penalty:

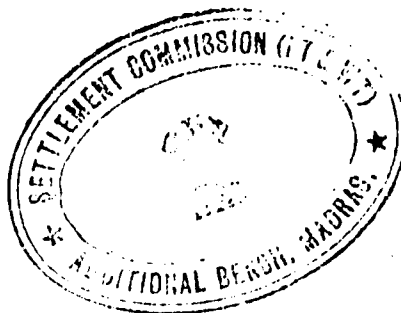
16. For the assessment year 1980-81, appeal against the assessment order was pending on the date of the application. At the same time, it was reopened u/s. 147. Since we are dealing with the original assessment proceedings themselves in all its totality, the proceedings u/s. 147 become infructuous. As regards the other assessment years involved in this application, we are concerned with the original assessment proceedings. There was a delay in filing the return of income for asst. year 1980-81, 1982-83 and 1983-84 for which no sufficient cause has been shown. In the circumstances, interest u/s. 139(8) will be levied for the delay in these assessment years, as per law. Interest u/s. 215/216 wherever chargeable will be levied from the due date for a period of 12 months ending from the date of filing the return, for the assessment years 1980-81 to 1984-85. As the applicant has co-operated in the proceedings before the Commission and has made a true and full disclosure of its income, immunity is granted from prosecution under the Central Acts and for the same reasons, penalties leviable under the Income-tax Act are waived.

17. The Assessing Officer is directed to compute the tax and interest payable by the applicant on the total income as per annexure to this order and intimate the same to the applicant. The applicant's counsel has requested for six monthly instalments to pay the tax and interest. We accordingly direct that the tax and interest may be paid in six equal monthly instalments, the first instalment to be paid before 31-07-1992.

18. This order shall be declared void if it is subsequently found by the Commission that it has been obtained by fraud or misrepresentation of facts.

Sd/-
(S.M. CHICKERMANE)
Member

Sd/-
(K. RANGARAJAN)
Member.



Endorsement of Orders:

Endt. No: 12/C/250/84-IT

Dated: 17th June 1992

1. The applicant,

2. The Commissioner of Income-tax, Indira Enclave-I, Hyderabad.

He is requested to report within 2 months to the Commission the amounts of additional tax, interest and penalties payable and actually paid by the applicant in consequence of the directions contained in this order.

3. The CIT (DR), Madras-35.

4. The Deputy Director of Income-tax, Madras-35.

5. The Assessing Officer - Assistant Commissioner of Income-tax, Circle I(2), Hyderabad.

He is requested to report within 2 months to the Commission, the amount of additional tax, interest and penalties payable and actually paid in consequence of the directions contained in this order. The report should be sent to the enclosed perforce.

6. The Secretary, Addl. Bench, Madras-35.

7. Guard File.

Shangana
(Smt. INDIRA BHARGAVA)
Secretary
Settlement Commission (IT & WT)
Additional Bench,
Sathguru Complex, 488-489, Anna
Salai, Madras - 500 035.



M/s. MEERA INDUSTRIES

Asst. year 1980-81.

Registered Firm

COMPUTATION OF TOTAL INCOME

Net profit as per/	restructured trading	Rs.	
and profit and loss account			5,88,741
<u>Add:</u>			
Charity and donation	Rs.	404	
Depreciation considered separately	Rs.	31047	
Interest paid to partners	Rs.	34408	
Investment allowance reserve	Rs.	20003	
Inflation in purchase (para 6.2 of the order)	Rs.	19873	
			1,05,735

			6,94,476
<u>Less:</u>			
Depreciation	Rs.	38081	
Investment allowance	Rs.	26671	
Deduction u/s 35B (as per assessment order dated 6.9.83)	Rs.	17743	
			82,495

			Total Income. 6,11,980
Less: Firm's tax			1,59,451

Less: Interest to partners			4,52,530

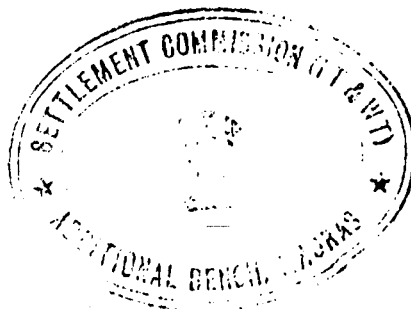
			34,408

			Allocable Income 4,18,122

ALLOCATION

	Share	Interest	Total
	Rs.	Rs.	Rs.
	-----	-----	-----
Smt. Geetha M. Desai			
25%	1,04,530	17,358	1,21,888
Sri S.M. Modi, HUF	25%	1,04,530	1,530
Sri S.M. Modi Indl.	25%	1,04,530	1,04,530
Shri Kantilal Desai	15%	62,720	15,520
Smt. Sudha Desai	10%	41,812	-
			41,812

	4,18,122	34,408	4,52,530



M/s.MEERA INDUSTRIES.

Asst.year 1981-82.

Registered Firm

COMPUTATION OF TOTAL INCOME

Rs.

Net profit as per restructured
Profit and Loss Account 12,22,852

Add:

1. Charity and donation	Rs.	389	
2. Depreciation considered separately	Rs.	89,897	
3. Investment allowance reserve	Rs.	1,07,490	
4. Interest paid to partners	Rs.	55,228	
			2,53,004
			15,45,856

Less:

1. Depreciation	Rs.	95,728	
2. Investment allowance	Rs.	1,43,330	
3. Export market develop- ment allowance as per assessment order dated 22.9.84	Rs.	14,601	
			2,53,659
Total Income			12,92,197
Less: Firm's tax			3,25,740
			9,66,457
Less: Interest to partners			55,228
Allocable Income			9,11,229

ALLOCATION

Name (Shri/Smt)	Share	Interest	Total
	Rs.	Rs.	Rs.
Geetha M. Desai	25% 2,27,808	22,316	2,50,124
Kantilal B. Desai	15% 1,36,684	21,755	1,58,439
Sudha Desai	10% 91,123	5,295	96,418
Satish Modi Indl.	25% 2,27,807	-	2,27,807
Satish Modi HUF	25% 2,27,807	5,862	2,33,669
Net	9,11,229	55,228	9,66,457



M/s.MEERA INDUSTRIES

Asst.year 1982-83

Registered Firm

COMPUTATION OF TOTAL INCOME

Rs.

Net Loss as per restructured
Profit and Loss Account 5,91,465

Less:

1. Charity and donation	Rs.	292
2. Depreciation considered separately	Rs.	83,804
3. Interest paid to partners	Rs.	98,361
4. Investment allowance reserves	Rs.	5,706
		<u>1,88,163</u>

Difference in gross profit at
25% on sales Rs.55,15,473- 13,78,868

G.P.declared 8,28,148 5,50,720 7,33,883

Total 1,47,418

Less:

Depreciation	Rs.1,02,847	
Investment allow.	Rs. 7,607	
Deduction u/s.35B	Rs. <u>23,501</u>	<u>1,33,955</u>

Total Income 13,463

Less: Firm's tax 190

13,273

Less: Interest 98,361

DIVISIBLE LOSS 85,088

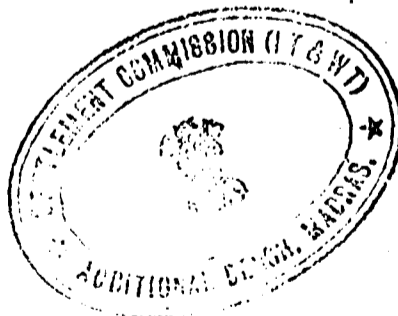
Name (Shri/Smt)	<u>ALLOCATION</u>		
	Share of loss	Interest	Net
	Rs.	Rs.	Rs.
Geetha M.Desai	15%	12,763	26,146 (+) 13,383
Satish Modi HUF	25%	21,273	10,167 (-) 11,106
Kantilal B.Desai			
HUF	10%	8,509	25,824 (+) 17,315
Satish Modi Indl.	25%	21,273	7,772 (-) 13,501
Sudha Desai	10%	8,509	8,852 (+) 343
Subodh Desai HUF	5%	4,255	6,663 (+) 2,408
Valmik Desai HUF	5%	4,253	6,463 (+) 2,210
Vinod Desai HUF	5%	4,253	6,474 (+) 2,221
		<u>85,088</u>	<u>98,361 (+) 13,273</u>



M/s. Meera Industries.

Assessment Year 1983-84.Computation of total income.

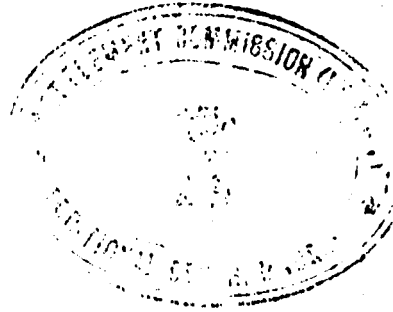
		Rs.
Net loss as per restructured trading account		3,70,675 (-)
<u>Less:</u> Charity and donation	92	
Interest to partners	53,616	
Depreciation considered separately	1,27,461	
Investment allowance reserve	49,939	
Penalty paid to Municipal Corporation, Hyderabad.	5,000	
<u>Gross Profit difference:</u>		
GP at 25% on Rs. 55,85,536=	13,96,634	
Less: G.P. declared	<u>5,28,394</u>	
	8,68,240	11,04,348
		<u>7,33,673</u>
<u>Less:</u> Depreciation	1,26,860	
Investment allowance	66,585	
Export market dev. allowance u/s. 35-B on travel and publicity outside India	15,586	
Repairs to machinery, not debited to P & L account	<u>30,067</u>	2,39,098
		<u>4,94,575</u>
<u>Add:</u> Income from other sources		8,000
	Total income	5,02,575
	rounded off to Rs.5,02,580.	
<u>Less</u> : Firm's tax		1,17,281
		<u>3,85,294</u>
<u>Less:</u> Interest paid to partners		53,616
		<u>3,31,678</u>



Asst. Year 1983-84 contd..

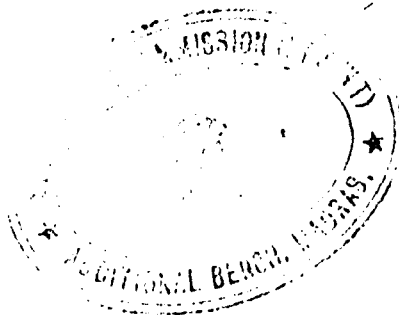
ALLOCATION

Sl.No.	Name	% of share	Share of profit Rs.	Interest Rs.	Total Rs.	
1.	Satish Modi	Incl.	25%	82,920	8,521	91,441
2.	Satish Modi	HUF	25%	82,921	..	82,921
3.	Kantilal B. Desai	HUF	10%	33,167	21,442	54,609
4.	Geetha M. Desai		15%	49,751	16,791	66,542
5.	Sudha M. Desai		10%	33,167	2,012	35,179
6.	Vinodh K. Desai	HUF	5%	16,584	1,587	18,171
7.	Subodh K. Desai	HUF	5%	16,584	1,678	18,262
8.	Valmik Desai	HUF	5%	16,584	1,585	18,169
				3,31,678	53,616	3,85,294



M/s. Meera Industries.Assessment Year 1984-85.Computation of Total income.

	Rs.
Net profit as per restructural profit and loss account	53,555
<u>Add:</u>	
Charity and donation	1,377
Depreciation considered separately	1,19,102
Interest paid to partners	63,763
Profit u/s. 41(2)	<u>2,500</u>
	1,86,742
<u>Addition on account of Gross Profit:</u>	
G.P. at 25% on sales of Rs. 68,82,693	17,20,673
Gross profit admitted	<u>15,68,526</u>
	1,52,147
Construction division expenses treated as capital expenditure (para 15 of the order)	<u>3,44,817</u>
	6,83,706
	<u>7,37,261</u>
Less: Depreciation	1,33,865
	<u>6,03,396</u> or
Total income	Rs. <u>6,03,400</u>
Less: Firm's tax	1,47,167
	<u>4,56,229</u>
Less: Interest to partners	63,763
	<u>3,92,466</u>
Allocable Income	-----



516/MJ
24.2.6.92

Last Year 1984-85 contd.

ALLOCATION

Sl.No.	Name of partner	% of share	Share of profit Rs.	Interest Rs.	Total Rs.
1.	Geetha M. Desai	15%	58,869	22,243	81,112
2.	Satish Modi	HUF 25%	98,117	719	98,836
3.	Kantilal B. Desai	HUF 10%	39,247	13,225	52,472
4.	Satish Modi	Indl. 25%	98,117	13,028	1,11,145
5.	Sudha B. Desai	10%	39,247	4,201	43,448
6.	Subodh Desai	HUF 5%	19,623	3,475	23,098
7.	Valmik Desai	HUF 5%	19,623	3,442	23,065
8.	Vinod Desai	HUF 5%	19,623	3,430	23,053
Total			3,92,466	63,763	4,56,229

