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Sri L.Raja Sekhar Reddy, IRO  
Asst. Commissioner of Incometax

**INCOMETAX DEPARTMENT**

1. Name & address of the assessee	: M/s. Modi Builders Methodist Complex, 1-10-72/2/3, Abids, Hyderabad.
2. GIR.NO.	: N-204
3. Circle	: ACIT (INV) 4 (1) Hyd.
4. Status	: Firm
5. Assessment Year	: 1995-96
6. Whether resident	: Yes
7. Method of accounting	: merchantile
8. Previous year	: 1-4-94 to 31-3-1995
9. Nature of business	: lease rent etc.
10. Dates of hearing	: 26-2-98, 6-3-98, 12-3-98, 18-3-98
11. Date of order	: 31-3-1998
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 return 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.Ram Mohan, CA of M/s.Gandhi & Gandhi Co., CAs appeared and the case was heard.

The assessee-firm is engaged in construction and leasing out the premises of Methodist Complex at Abids, Hyderabad. It receives lease rent from the tenants 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 & Loss account, has debited some expenditure on account of civil works carried out during the previous year relevant to the Assessment year 1995-96 and by filing a statement of total income, the said income was treated as business income by the assessee. Finally, returned a net loss of Rs.4,80,825/-

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

The assessee 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 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 is the rental income, besides, maintenance charges. The assessee besides this income from Methodist Complex, viz., 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 lease rent to the Methodist Church of India. This is a nature of ground rent. The assessee has undertaken to exploit the building for several years and has returned the rental 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 an 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 KHALNAYAK, 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 substantial income to the assessee, the assessee appears to have shown incomes arising from several sources like, property, business income under the head BUSINESS income, so that the loss from one source can be set off against the positive income of another source. So that finally, he can return only a small amount of income and reduce the income tax 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 respect of building construction in P&L account.



of India the public sector bank is many times more than the rents collected from other tenants. 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 debited 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 maintenance.

The profit realised from feature film KHALNAYAK is treated as business income. Therefore, the assessee's total income from various sources is computed as under:

**Property Income :**

Lease rent received	Rs. 15,66,323
Less Lease rent paid	Rs. 14,40,000
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Total	1,26,323
Less: Municipal taxes	48,988
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	77,335
less: 1/5 for repairs	15,467
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	61,868

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

**less maintenance expenses**

borewell maintainance	1,000
building maintenance	1,15,000
lift maintenance	16,500
maintenance expenses	22,348
security charges	57,375
Trilshavally	9,680
50% of ater charges	
electricity	
diesel expenses	1,13,680

total expenses Rs. 3,15,583

net property income Rs. 74,051

**Business income :**

Share of profit from KHALNAYAK	Rs. 1,03,195
Other income	Rs. 292

**Income from other sources**

Interest on Fixed deposit	Rs. 1,01,501
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Total taxable income

Rs. 2,79,009

Tax thereon — 1,11,600

Add: Gnt. U/s. 230A — 29,016

Gnt. U/s. 230B. 80,352

1,09,368

Total tax	2,20,972
Less: Prepaid taxes	Nil
Tax payable	2,20,972

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

Encl: Challn, DN & Penalty notice.

*[Handwritten Signature]*

(S. RAJA SESHAR REDDY)  
Asst. Commissioner of Income Tax,  
Circle 4(1) (Inv), Hyderabad.

Copy to the assessee:

TRUE COPY

*[Handwritten Signature]*