

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

आई० टी० एन० एस०-65
I. T. N. S.-65

INCOME-TAX DEPARTMENT

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| <p>1. निर्धारित का नाम
Name of assessee M/s.Modi Builders,
Methodist Complex,</p> <p>2. पता
Address 1-10-72/2/3,
Abids,
Hyderabad.</p> <p>3. एपा० ले० सं०/मा० गु० र० सं०
P. A. N./G. I. R. No. M-304</p> <p>4. वार्ड/सर्कल/रेंज
Ward/Circle/Range ACIT(Inv) 4(1), Hyd.</p> <p>5. हैमियत
Status Firm</p> <p>(क) यदि हि० अ० कु० है तो क्या कर की उच्च दर लागू होती है ?</p> <p>(a) If HUF, is higher rate of tax applicable ?</p> <p>(ख) यदि कंपनी है तो</p> <p>(b) If company, whether</p> <p>(i) देगी/अन्य
Domestic/Others</p> <p>(ii) जनता का पर्याप्त रूप से हितवद्ध/जनता का पर्याप्त रूप से हितवद्ध नहीं</p> <p>Public substantially interested/Public not substantially interested.</p> <p>(iii) औद्योगिक/गैर औद्योगिक
Industrial/Non-industrial</p> <p>(iv) धारा 108/धारा 108 से भिन्न
Section 108/other than section 108</p> | <p>6. निर्धारण वर्ष
Assessment year 1994-95</p> <p>7. क्या निवासी/निवासी किन्तु मामूली तौर पर निवासी नहीं/अनिवासी
Whether Resident/Resident but not Ordinarily resident/Non-resident.</p> <p>8. लेखा विधि
Method of accounting</p> <p>9. पूर्व वर्ष
Previous year. 31-3-1994</p> <p>10. कारबार/कारबारों की प्रकृति
Nature of Business(es)</p> <p>11. सुनवाई की तारीख/तारीखें
Date(s) of hearing 25-3-97 & 26-3-97</p> <p>12. आदेश की तारीख
Date of order 26-3-1997</p> <p>13. किस धारा तथा उपधारा के अधीन निर्धारण किया गया
Section and sub-section under which the assessment is made.</p> |
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143(3)

निर्धारण आदेश
ASSESSMENT ORDER

The assessee is a firm. The assessee filed its return of income, admitting an income of Rs.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., CA, 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/a.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 Rs.71,34,835/-. 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. In the P&L a/c, the assessee firm admitted as other income Rs.80 lakhs which represents the income disclosed under Sec.132(4) by Sri Suresh P. Bajaj on 14-11-94, before the ADI. The assessee-firm while preparing the P&L account, has debited the entire expenditure on account of civil 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 Rs.16,46,205/-.

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

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 Rs.43,90,990/- which is the cost of civil work incurred by the assessee during the previous year relevant to the AY 1994-95. Actually, the assessee has also debited the so-called P&L account for the AY 94-95 with the civil work opening balance at Rs.1,12,93,403 which is the expenditure claimed to have been incurred by him towards construction of building in previous years upto the previous year ended 31-3-92 that means, upto and including fin. years 92-93. Even otherwise, this expenditure of Rs.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, in my 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 assessee from various persons as per the seized material which amounts to Rs.91.25 lakhs (the assessee stated that he incurred an expenditure of Rs.10.25 lakhs out of this) is treated his income from business. For which, the assessee gave a declaration u/s.132(4) at the time of search. Therefore, the assessee's 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 :

- 1) Property on sale of car Rs.37,744, which appears to have been used for the purpose of business.
- 2) Share of profit from exploiting feature film, KHALNAYAK
- 3) Income obtained u/s 132(4) of Rs. 80,00,000/-

Declaration given by Sri Suresh P. Bajaj u/s.132(4) at Rs.80 lakhs, is also treated 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 assessee-firm 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	Rs.
Gross income	..	Rs.14,22,907	
Less: 1/5th for repairs	..	Rs. 2,84,581	11,38,326

Deduct :

Maintenance charges received	Rs. 2,85,182	
Maintenance charges paid	Rs. 2,71,899	
	Rs. 13,283	
Add: Lease rent	Rs.14,40,000	
Add: Interest	Rs. 1,98,908	16,52,191
Loss from property income (-)		<u>5,13,865</u>

Income from Business :

Profit on sale of car as returned	..	37,744
Share of profit from KHALNAYAK	..	10,88,215
Income offered u/s.132(4) at the time of search	..	<u>80,00,000</u>
Total business income		<u>91,25,959</u>


COMPUTATION OF TOTAL INCOME :

Income from property	..	(-) 5,13,865	Rs.
Income from business.	..	<u>91,25,959</u>	
Total taxable income	..	91,25,959	
Less: Brought forward losses to the extent of business income	..	<u>24,84,055</u>	
Balance taxable income	..	<u>66,41,904</u>	

Tax thereon:

SC.	Rs 26,56,761	Total tax payable Rs 53,44,495
	Rs 3,18,816	Less Paid Rs 19,00,000
	Rs 29,75,577	Balance payable Rs 34,44,495
Sub. 234 A	Rs 11,30,690	
234 B	Rs 12,06,360	
234 C	Rs 29,868	

This should be paid as per Demand Notice & Challan enclosed. Penalty proceedings u/s.271(1)(c) initiated separately.


 (C.V. SURYAPRAKASH RAO)
 Asst. Commissioner of Income-tax (Inv),
 Company Circle 4(1), Hyderabad.

Copy to the assessee.

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