

Shri J. Albert, IRS  
Asst. Commissioner of Incometax,  
Circle.1(2) :: Hyderabad.

इसलू. टी. एन.एस.-11  
W. T. N. S-11

धन कर  
**WEALTH TAX**  
(आयकर विभाग)  
(Income-tax Department)

1. निर्धारित का नाम  
Name of assessee..... **Shri Satishchandra Mddi,**  
**5-4-187/3 & 4,**  
**Karbala Maidan, Sec' bad.**
2. पता  
Address.....
3. स्थाई लेखा सं./सां.सू.रं  
P. A. No./G. I. R..... **S.775/10.1(2).**
4. जिला/वार्ड/सर्कल  
District/Ward/Circle..... **Circle.1(2).**
5. हैसियत (व्यक्ति/हि. अ. कु./कम्पनी)  
Status (Indl/H. U. F./Company)..... **Individual.**
6. निर्धारण वर्ष  
Assessment year..... **85-86**
7. क्या निवासी  
निवासी किन्तु सामान्य ढंग से निवासी नहीं है?  
अनिवासी  
Whether Resident  
Resident but not ordinarily Resident  
Non-resident..... **Resident.**
8. भारत का नागरिक है/नागरिक नहीं है (केवल व्यक्ति के मामले में)  
Citizen of India/Non-citizen (Applicable to individual only).....
9. मूल्यांकन की तारीख  
Valuation date..... **31.3.85**
10. सुनवाई की तारीख/तारीखें  
Date(s) of hearing.....
- आदेश की तारीख  
Date of order..... **30.3.90.**
- प्रतिभाग और उपभाग जिसमें आदेश पारित किया गया  
Section and sub-section under which the assessment is made..... **U/s.16(3).**

निर्धारण आदेश  
**ASSESSMENT ORDER**

The assessee filed return of wealth on 30.8.85 admitting net wealth of Rs.4,38,902/-  
In response to the notice u/s.16(2) the assessee's A.R Shri Anilkumar B.Vithlani, appeared  
and the case was examined. After verification of the statements filed the net wealth re-  
turned is accepted.

Loss wealth returned is accepted : (-) Rs. 4,38,902/- (-)

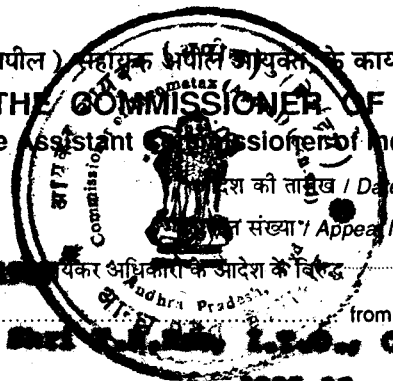
Declared as N.D for 85-86.

प्रमाणपत्र-6 दिनांक/सं. 85-भारतमू.टेक-(सी-90)-6-11-86-22,13,000.  
REGISTRATION-6 दिनांक/सं. 85-भारतमू.टेक-(सी-90)-6-11-86-22,13,000.

copy to the assessee.

J. Albert.  
( J. ALBERT )  
Assistant Commissioner of wealthtax,  
Circle.1(2) :: Hyderabad.

आयकर आयुक्त (अपील) सहायक आयुक्त के कार्यालयों में  
IN THE OFFICE OF THE COMMISSIONER OF INCOME-TAX  
(Appeals)/Appellate Assistant Commissioner of Income-tax



**B.K. SAHU**  
**COMMISSIONER OF INCOME TAX**  
(Appeals)-(Control)  
HYDERABAD A.F.

26.02.99.

आदेश की तारीख / Date of Order

आदेश संख्या / Appeal No. **510/CC.1/CIT(A)(C)/98-99.**

अपील को दायर किया गया।

Instituted on the **26.02.1999** from the order of Income-tax officer/Inspecting

Assistant Commissioner of Income-tax.

**Shri. S. S. S. S. S., Central Circle, Hyderabad.**

- (1) कर निर्धारण वर्ष/Assessment Year
- (2) अपीलार्थी का नाम/Name of Appellate
- (3) आय जिस पर कर निर्धारण किया गया है/Income assessed
- (4) मांगा गया कर  $\frac{\text{आयकर}}{\text{अधिकर}}$  शास्ति/जुर्माना
- $\frac{\text{Income-tax}}{\text{Super-tax}}$  Penalty/Fine demanded
- (5) धारा जिसके अधीन आदेश जिसके विरुद्ध अपील की गई है पास किया गया था

**1998-99**  
**Shri. Satishchandra Modi,**  
**Flat-107, Kumbha Nandan,**  
**Bombay.**

**Rs. 25,100/-**

**Rs. 6,200/-**

**s/s.143(3)**

11/02/99

Section under which order appealed against was passed

सुनवाई की तारीख **16.2.99.**  
Date of hearing  
अपीलार्थी की ओर से उपस्थित **Shri Ajay C. Nanda, C.A.**  
Present for Appellant  
विभाग की ओर से उपस्थित  
Present for Appellant Department

**Shri. S. S. S. S.**

अपील आदेश और विनिश्चय के आधार  
APPELLATE ORDER AND GROUND OF DECISION

ITA, No. 510/C.C.1/CIT(A)(Control)/99-99.



In this appeal filed against the Asst. Order passed u/s.143(3) of the I.T. Act, the appellant has raised two grounds. The first ground is that the assessing officer erred in coming to the conclusion that the activity of the appellant in respect of 'Rasoolpura property' did not constitute a business and therefore the loss of Rs. 1,000/- was not a business loss but was a loss under the head "Income from Other Sources" and therefore would not be carried forward. The second ground is that the assessing officer was not justified in not considering the business loss of Rs.1,04,847/- brought forward from the earlier year.

2. Shri Ajay C. Mehta, C.A., attended and has drawn my attention to the order of the CIT(A)-III, Hyderabad, in the appellant's own case for the asst. year 1983-84 & 1984-85 vide his order dt: 19.10.1987 and also the ITAT, Hyderabad Bench B's order for the same year in ITAs.No. 103 & 104/Hyd/88 vide order dt: 12.03.93 where it has been held that the activity undertaken by the appellant in developing 'Rasoolpura property' was nothing but a business activity and therefore the income should be assessed under the head "Profits and Gains of Business" and not under the head "Income from Other Sources".

3. I find that while disallowing the claim of the appellant that the loss in the "Rasoolpura property" was a business loss, the assessing officer has not mentioned any separate reason nor has brought into record any fresh material except referring to the reasons for disallowance

Contd..3..



:: 3 ::

ITA, No. 510/C.C.1/CIT(A)(Central)/98-99.

as mentioned by him on similar issues for the asst. year 1983-84. In his opinion, the whole transaction was only one of sub-lease of property by the appellant without any of the concomitants of a regular business.

3.1. During this year, the appellant has computed the loss from "Rasoolpura property" in the following manner:-

Rent Receipts		.. Rs.1,91,920
<u>Less:- Expenditure</u>		
Licence Fees	..Rs.1,20,000	
Financiers consideration	..Rs. 72,000	
Repairs	..Rs. 3,000	.. <u>Rs.1,95,000</u>
The loss is		.. <u>Rs. 1,080</u>

4. From the facts mentioned in the appeal orders for earlier years, it is gathered that the appellant took on lease a plot of land along with a dilapidated structure situated at Rasoolpura from M/s.Investa Chemicals for 17 years. The appellant carried out certain renovations, repairs and additions and let out the property to M/s.Southern Roadways Ltd., Secunderabad. It was contended that the appellant, who was carrying on real estate business, had developed this plot of land as a part of its business activity and moreover, as the appellant was required to surrender the entire structure as would be existing at the time of expiry of the lease period to the lessor without any compensation, the appellant did not derive any enduring benefit through this lease transaction. Therefore, it was

Contd..4..



॥ ४ ॥

ITA.No. 510/CC.1/CIT(A)(Central)/98-99.

contended that the income from letting out the property after development of the plot and carrying out the renovations, repairs etc., should be assessed under the head 'business or profession' and any expenditure incurred for improving the existing structure would be allowed as revenue expenditure. I find that both the learned CIT(A)-III and ITAT have agreed with the contentions of the appellant in their appeal orders for the asect.years 1983-84 and 1984-85.

5. Since this issue has already been decided in favour of the appellant and the Tribunal which is the last fact finding authority has come to the conclusion that the activity of the appellant in developing the property and letting out the property on rent was a business activity, I direct the assessing officer to treat the loss of Rs.1,000/- incurred in such business as a 'business loss'.

6. Regarding the other contention of carry forward of business loss of this year and set-off of business loss of earlier years, the assessing officer is advised to give a definite finding after examining whether the appellant fulfilled all the conditions for carry forward and set-off of loss, particularly keeping in view the provisions that the loss return should have been filed within the prescribed time limit.

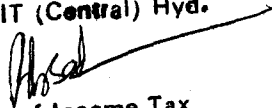
7. In the result, the appeal is treated as allowed.

/CERTIFIED TRUE COPY /

Copy of the order forwarded to:

1. Appellant with D. N.
2. A. O. with records
3. C.I.T. (Central) Bangalore.
4. Jt. CIT/Addl CIT (Central) Hyd.

BJR\*

  
Commissioner of Income Tax  
(Appeals) (Central)  
HYDERABAD.

Sd/-  
(B.K.SAVY)  
Commissioner of Income Tax,  
(Appeals) (Central), Hyderabad.

P.A. NO. 5-704 | C.C.I.

Office of the Asst. Commissioner  
of Incometax: Central Circle-I  
Hyderabad :: Dated :- 21/11/1989

TO

Sri Salishchandra Modi  
1-10-72/2/3 Beguabpet,  
Hyderabad

Sir(s),

Sub :- Reposting of your case for the A.Y. 1985-86  
Regarding. (W.C. 115/10)

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Your case stands <sup>re</sup> posted for hearing on 16/11/1989  
for the above assessment year is reposted for hearing on  
20/12/1989

Yours faithfully,

*[Signature]*

Assistant Commissioner  
Central Circle- I , Hyderabad.

*[Handwritten note]*  
21/11/89

PROCEEDINGS OF THE INCOMETAX OFFICER: CENTRAL CIRC. I: HYD.

SHRI Y.R. RAO, I.R.S.  
Incometax Officer.

GIR.NO. S-704/C.C.I

Dt/24-8-1987

Sub :- Waiver of interest charged u/s 139(8) waived under Rule 117-A and interest charged u/s 217 waived under Rule 40 of the I.T. Rules, 1962 in the case of Sri Satish Chandra Modi, 54-187 Karbala Maidan, Sec 11 Bad  
Asst. year(s) 1985-86 -- Order -- passed.

Ref :- 1) Assessee's petition dt. 18-5-87

2) IAC's letter No. Tech-No-33/C.C.I(12)/87-88

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Dt. 26-8-87

ORDER :-

Consequent on the assessee's petition dt. 18-5-87 seeking waiver of interest charged u/s 139(8) and interest charged u/s 217 of the I.T. Act, 1961 for the assessment year 1985-86, the interest u/s 139(8) of Rs. is waived under rule 117-A of the I.T. Rules, 1962 and interest charged u/s 217 of Rs. 1,860/- is waived under Rule 40 of the I.T. Rules, 1962.

After giving effect to the above order, the tax liability of the assessee is worked out as under :-

Total tax due as per order d/30-3-87	Rs. 8,103/-
Less: 139(8) intt. waived as above:	Rs. —
" 217 intt. waived as above	: Rs. 1,860/-
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BALANCE TAX PAYABLE	Rs. 6,243/-
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✓ This should be paid as per Challan enclosed.

(Y.R. RAO)  
Incometax Officer,  
Central Circle-I, Hyd'bad.

Copy to the assessee.

SARMA/\*

Received  
on 27/8/87

Shri Y.R. Rao, IRS.  
ITO : Central Circle-I, Hyd.

आयकर विभाग

INCOME TAX DEPARTMENT

City/District

GIR.S.704

: Hyderabad : Dt/30-3-87.

1. आवेदन क्र.  
Form No.

1985-86

2. आवेदनकर्ता का पता (Full address)

Sri Satishchandra Modi, Karbala Maidan,  
Secunderabad.

Individual.

4. क्या—निवासी परन्तु साधारणतः निवासी नहीं  
अनिवासी

Whether—Resident but not ordinarily resident  
Non-resident

Resident.

5. लेखा विधि  
Method of Accounting

Mercantile

6. लेखा अवधि (आय स्रोत के लिए इसे अलग दिखाएं)  
Accounting period (to be shown separately  
for source of income)

24-10-84.

7. किस धारा और उप-धारा के अधीन कर लगाया गया  
Section and Sub-section under which  
assessment is made.

143 (3)

कर निर्धारण आदेश  
ASSESSMENT ORDER

The assessee filed a return of income on 30-7-86 admitting a total income of Rs. NIL after setting of earlier year's loss. In response to hearing notice, Sri Anil Kumar Vithlani, C.A. appeared and explained the return. On scrutiny, the asst. is completed as under :-

\*क्या व्यक्ति, अविभाजित हिन्दू परिवार, कम्पनी, संघीय प्रतिष्ठान, राजस्व का या अविभाजित प. त. प. व्यक्तियों का संघ या व्यक्तियों का निकाय।

•Whether individual, Hindu undivided family, company, local authority, registered or unregistered firm, association of persons body of individuals.



BUSINESS: Net income shown is accepted. Rs. 45,597  
~~49,947~~

Note: Share income/loss from the following firms is adopted provisionally subject to rectification u/s 155 :

1. M/s Meera Industries	: Rs. (-) 17,981		Rs. <u>3,181</u> (-)
2. M/s R.S. & Co.,	: Rs. (+) 14,800		Rs. <u>42,416</u> (+)
	: Rs. (1) <u>3,181</u>		

OTHER SOURCES: Loss shown is accepted. Rs- 3,597  
Rs. 32,347

The assessee returned loss of Rs. 1080/- under the head 'Rasoolpura property own business'. For the detailed reasons discussed in the asst. order for the asst. year 1983-84, I hold that the income from Rasoolpura property' should be assessed under other sources, and not Business as the whole transaction is only one of a sub-lease of property by the assessee without any of the concomittants of a regular business.

Income from Rasoolpura property as discussed above.	: 1,93,920	Rs.
Less: Expenditure claimed.	: <u>1,95,000</u>	Rs. 1,080
Net loss	: <u>1,080</u>	
Total loss from other sources.		<u>Rs. 4,677</u>

Note: Depn. on furniture is disallowed as in last year.


abstract.

Income from Business	...		Rs. 42,416
Loss from other sources	...		Rs. <u>4,677</u>
Net income from business	...		Rs. 37,739
Less: Deduction u/s 80-VV	...		Rs. <u>2,600</u>
NET INCOME	...		Rs. 35,139 or <u>Rs. 35,140</u>

In the absence of LIP receipts filed, deduction u/s 80-C is not considered.

	Rs.
Net Income :	35,140/-
Tax thereon :	
Income-tax:	Rs. 5,549
Surcharge:	694
Total :	<u>Rs. 6,243</u>
Less:- Taxes paid :	<u>-Nil-</u>
	<u>Rs. 6,243</u>
Add:-	
Intt.U/s.217 :	<u>Rs. 1,860</u>
Total tax payable :	<u>Rs. 8,103</u>

Penalty proceedings U/s.273 are not initiated, as the Return filed under 'Amnesty Scheme'.

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

Copy to the assessee.