

Income Tax Department

gone for appeal

CIRCLE
WARD

INCOME - TAX DEPARTMENT

1. Permanent Account No.

G. I. R. No

2478/2002

Dt. 31.3.06

2. Year of assessment

1903-04

3. Name of the assessee (with complete address)

Shri. Rajkumar Nath,
C/O. 107/7 & 8, Kumbha Nidhi,
Bombay.

4. Status :-

Individual

5. Whether :-

Resident

Resident but not ordinarily resident

Non-resident

Resident.

6. Method of accounting

7. Accounting periods (To be shown separately for each source of income)

01-10-1902

8. Section and sub-section under which the assessment is made

143(3) of the I. T. Act.

ASSESSMENT ORDER

The assessee filed his return on 12.6.04 declaring loss of Rs. 1,37,300/- which includes unaccounted loss of Rs. 31,799/- carried forward. Mr. Balkrishna Wadhvani, Chartered Accountant who appeared for the hearing of the case in response to notice u/s 143(2) has been heard and the case discussed with him.

The loss allowed for this year is Rs. 1,05,501/- from business, income of Rs. 1,05,501/- and by way of dividends etc. Break up of the business loss is as under:-

Order No. 1

Own Business in developing property	(-)	1,22,532
Share income from firms in which the assessee is a partner		25,849
		92,683
Add: Interest payments on monies borrowed for investment in firms		16,129
		1,08,812
Add: Depreciation on furniture		484
		1,09,296

On 25.5.81 the assessee entered into agreement of lease with M/s. Investa Chemicals, a registered firm, for taking on lease a piece of land along with buildings existing thereon under Municipal No. 15/2, Basoolpara, Begunpet, Secunderabad. The assessee wanted to make use of the property as a godown. The terms of the lease deed provide that the property is leased for the purpose of godown workshop of the assessee or his nominee; 2) the lease was for a period of 17 years commencing from 25.8.81; 3) the lessee shall pay rent of Rs. 1/- per sq.ft. for every month of the area occupied by the existing lands and buildings; 4) a deposit of Rs. 2/- lakhs shall be made by the lessee with the lessor; 5) all the rates and taxes payable on the demised property shall be paid by the lessee in the name of the lessor; 6) the lessee is permitted to make additions and alterations to the existing building and structures; 7) the lessee is also permitted to make construction on the open land measuring about 20,000 sq.ft. and pay a further lease amount of 0.25 per sq.ft. of the area on which such constructions were made; and 8) on expiry of the lease period the construction and structures shall be surrendered to the lessor without claiming any compensation.

After taking lease of the said premises the assessee entered into an agreement for finance with a Private Trust known as Sharada Family Trust to secure finance for renovations, repairs etc. required for the existing structures to make them useful for godown/workshop. A loan of Rs. 3.5 lakhs was to be advanced by the Sharada Family Trust over a period of 2 years. This agreement is for a period of 15 years. The interest payable is fixed at Rs. 5000/- per month uniformly for the entire period the lease without any provision for escalation of interest.

Cont. 3.

Thereafter, the applicant entered into an agreement with M/s. Southern Leasing Limited (which is in the form of memorandum of association), according to this memorandum, the assessee is required to provide certain services, the rent payable by the Southern Leasing Limited is Rs. 1000/- per month. The total building area leased out to him was 60,125 sq.ft. with open space of 20,000 sq.ft. The assessee was to receive an advance of Rs. 20,000/- from the Southern Leasing Limited for the two months and on which an interest is payable. The lease is to run for a period of 5 years.

The assessee claims that the activity of the assessee in taking lease of the structures and open land from M/s. Investors (Private), developing it into self-contained projects and leasing them out to Southern Leasing Limited is an activity in the nature of business and the Income-tax Act should apply. His counsel should be assessed under the head 'Profits and gains of business'. Sri Jadhav Prasad, the counsel for the assessee, in the case, he pleads that the assessee has been carrying on business and would violate the stand taken by the Hon'ble Supreme Court. He has relied on the decision of the Supreme Court in I.T. No. 100 (1971) in support of his contention.

I have considered the points raised by the assessee's representative. The property was taken on lease by the assessee for the purpose of using it as a godown/warehouse for himself or his business. As the property was not in the possession for occupation in the state in which it was taken on lease, he has borrowed some money to improve and provide certain facilities required for its occupation and then leased it out to a single party i.e. Southern Leasing Ltd. or similar. Although under the lease agreement he had the necessary license from the lessee to exploit the vast vacant land in the premises, he has not put up any new structures and as it happened later and the other concerns viz. Hoshi Builders and Builders (Punjab) Ltd., Ltd. have taken the land on lease and developed for their projects. What the assessee has done on the facts of the case, is just what any investor would do to earn income from the capitalization of an asset taken on a long lease by him. The activity carried on by the assessee did not involve an activity which could be called 'Business'. The Supreme Court decision relied upon by the assessee's representative does not come to his aid on the facts and circumstances. In that case the assessee was a company which had come into existence with the object of taking properties on lease, developing them and selling or leasing them out for a monetary gain. There

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the intentions and objects of the company as revealed by its memorandum of articles are to carry on a sustained activity to develop markets and commercial phases. In instant case, the assessee is an individual whose motive has to be gathered only with reference to the conduct and the facts relating to the transactions. As to the motive, no doubt, the assessee's representative vehemently pleaded that the intention was to carry on a business in developing properties. But then, this is not brought out by the nature of the transaction involved here. The assessee has taken an open land with an existing structure made some improvement to it and sub-leased it only as a go-down. Therefore the whole transaction is only one of sublease of property by the assessee without any of the commitments of a regular business. I am, therefore, inclined to hold that the income is rightly assessable under the head 'Other Sources' and not 'Business' and accordingly bring it to tax.

On the basis of my above findings, I compute the income of the assessee as under:-

I) BUSINESS:

1. Share income - 25%		
from M/s. Nests Industries provisionally adopted subject to rectification u/s 155.		23,771
2. Share income - 50%		
from M/s. S.M. Hotel Commercial Complex provisionally adopted subject to rectification u/s 155;		6,078
		<u>29,849</u>
Less: Interest payments		14,129
		<u>15,720</u>

II) OTHER SOURCES:

1. Amounts received from sublease of structure		
receipt of rentals from Southern Roadways Ltd.		1,24,782
Less:		
a) Licence fees paid to owner of the land and structure	1,20,000	
b) Financial considerations	12,000	
		<u>1,32,782</u>
		<u>14,802</u>
2. Dividends		1,071
3. Interest receipts		2,000
4. Amounts included u/s 64 as declared		100
		<u>17,973</u>
		<u>15,000</u>
		<u>17,973</u>
		<u>32,993</u>
		<u>48,713</u>

Contd.

TOTAL INCOME

Rs 74,910

As the assessee did not have own building during the year the question of allowance of depreciation does not arise.

Tax Deduction	Income-tax		Rs 24,228
	Surcharge		2,228
			26,456
Less: 228	Advance tax	456	
		4,004	
			22,452
Add: Interest u/s 179		960	
Interest u/s 217		9,480	
			10,440
	Balance payable :		32,892

Carry forward of loss is not allowed as held in assessment order for assessment year 1962-63.

Notices for penalties u/s 271(1)(a) & 273(2)(a) issued separately.

24/-
(U.V.V.S. NINAN SUNDAR)
Income-tax Officer,
Central Circle-I, Hyderabad.

Copy to the assessee.

/ TRUE COPY /

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WEALTH TAX DEPARTMENT

District.

G. I. R. No.

A. R. No.

(1974) C. No. 10, 1-2-1988.

- 1. Year of assessment : 1981-82.
- 2. Name of assessee (with complete address) : Sri. B. Vithalani, 1001, Secunderabad.
- 3. Status :-
Individual-citizen/Not a citizen of India : Individual.
Hindu Undivided Family.
 Company
- 4. Whether :-
Resident and ordinarily resident. : Resident.
Resident but not ordinarily resident
 Non-resident
 Date of hearing : 1-2-1988.
- 5. Valuation Date : 15-11-1981.
 Date of Order : 1-2-1988.
- 6. Section and sub-section under which the assessment is made : 16(3).

ASSESSMENT ORDER

The assessee filed the Return of Wealth on 1-2-1984 admitting a net Wealth of (Rs. 1,70,500/-). The Assessing Officer B. Vithalani, the assessee's A.R. proposed as per the one occasion and finally the assessment is completed under 16(3) accepting the net Wealth returned.

Net Wealth returned : (Rs.) 1,70,541/-
 or
 1,70,500/-

Declared by A.R. on 1-2-1988

Copy to the Assessee.

Signature of A.R. B. Vithalani, Secunderabad.

*Returned Revised in June 54
after taking son's complex profit*

SHRI SATTISHCHANDRA S. MOHJI S/o. MANILAL MOHJI
5-4-197/3 & 4, Karbala Maliga, Bhandarkar, Ashru Prasth.

STATEMENT FOR 1963-64

States : India & Goa
Valuation Date : 31st Dec 1962
Account Books Maintained : Cash, Stock, Ledger.
P A N : 42-000-24-0001/1963-III.

IMMOVABLE PROPERTY

IMMOVABLE PROPERTY (NON BUSINESS ASSETS):

4th Share in House at Balapur.	12,092
Less: Exemption u/s. 5(1) (iv).	12,092
	NIL

MOVABLE PROPERTY (BUSINESS ASSETS):

INVESTMENT ASSETS:

M/s. Premier Dutch Coors.	60,000	
M/s. Investa Chemicals.	60,000	
	1,00,000	

MOVABLE PROPERTY (NON BUSINESS ASSETS):

1. Share Interest as Partner in Partnership Firm

M/s. Meera Industries.	71,500	
Add: Share in Investment Allowance Reserve.	41,700	
	1,12,600	
Less: Exemption u/s. 5(1) (iii) - Amount eligible 1,12,600 - Restricted to 92,313.		92,313
		20,347

2. Deposits:

Electricity Deposit	5,000	
Subbia Mills Co-op. Housing Society.	15,000	
Kings Auto Service (for petrol).	100	
	21,500	
Less: Exemption u/s. 5(1) (iii)		15,955
		5,595

3. Shares in Indian Companies (Widely Held)

Less: Exemption u/s. 5(1) (iii)	26,314	
	26,314	
		NIL

4. Loans and Advances:

Manilal G. Mohi	60,000	
Sohan S. Mohi	1,12,000	
S. M. Mohi Commercial Complex	1,12,000	
M W W Associates	5,000	
Vishaji Castings	5,000	
Gurudev Engineering Co.	1,000	
R & S Enterprises	1,000	
Mohi Builders	11,01,000	
S. G. Mohi Educational Trust	1,000	
Prakash Builders	1,00,000	
Industrial Engineering Co.	5,000	
S. M. Mohi Discretionary Family Trust	51,000	
Parash Trading Corporation	1,000	
Sohan Engineering Corporation	1,00,000	
Prasad Mohi	1,000	
Tarulata S. Mohi	20,000	
	20,96,260	

5. Furniture	...	3,874
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COMPUTATION OF NET WORTH.

6. Compulsory Deposit		24,674	
Least Exemption u/s.5(1) (w)		<u>24,674</u>	NIL
7. Cash on Hand and Banks			
Andhra Bank	545		
Bank of India	300		
State Bank of India	254		
		<u>1,100</u>	
Least Exemption u/s.5(1) (w)(i) (500 + 250)		<u>754</u>	545
8. Cash on Hand			7,858
			<u>21,34,487</u>
<u>Amounts includible u/s.43</u>			
a) Amount thrown to common hotchpot of M.C. Modi (HUF) to be clubbed u/s.4(1)(b) as in last year.		15,000	
b) Amount thrown to common hotchpot of S.M. Modi (HUF) to be clubbed u/s.4(1)(b).		25,000	
c) Gift to Wife Tarulata Modi u/s.64(1) (a) (i).		<u>12,000</u>	
		<u>52,000</u>	
Less: Amount includible u/s.64(1) (a) (i) in hands of spouse - Tarulata Modi.		<u>50,000</u>	2,000
			<u>21,36,487</u>
<u>Debts:</u>			
<u>Business Debts:</u>			
Sherada Family Trust.	...		2,00,000
T.V.S. Rent Deposit.	...		32,000
Lease Rent Payable.	...		<u>10,000</u>
			<u>2,42,000</u>
<u>Non-Business Debts:</u>			
Modi Chinnal HUF.	...		92,400
Indian Iron & Steel Corporation.			4,75,435
Laxmal Pannalal Pithi.			1,10,340
S.M. Modi Family Trust			5,00,000
S.M. Modi (Loan from HUF after 1960).			20,000
Jayantilal Parikh.			25,750
Manojkumar J. Parikh.			25,750
Kanchan N. Parikh.			25,750
S.M. Modi (HUF).			250
Pravinchandra N. Modi.			1,00,344
Pravara Agricultural Engineering Corporation.			20,000
Pravara Engineering Corporation.			10,000
C.G. Modi			1,00,119
Indulal N. Parikh.			61,000
Katwa.			25,000
S.M. Modi (HUF with wife).			1,00,570
S.M. Modi (HUF with Mohan).			20,000
S.M. Modi (HUF with Sourabh).			75,000
Sourabh S. Modi.			20,000
Ashish Engineering Corporation.			20,000
P.N. Modi Commercial Complex.			<u>1,00,574</u>
			<u>22,30,238</u>

Contd...3.

COMPUTATION OF WEALTH (CONTD.)

ABSTRACT OF TOTAL WEALTH.

	<u>Business Asset</u>	<u>Non-Business Asset</u>
Immovable Property	NIL	NIL
Moveable Property	1,00,000	21,36,487
	<u>1,00,000</u>	<u>21,36,487</u>
Less: Debts	2,42,000	22,65,028
	<u>1,42,000</u>	<u>28,541</u>
	(-) 1,42,000 +	(-) 28,541
		(-) 1,70,541 or
		<u>1,70,500</u>
		<u>NET WEALTH</u>

STATEMENT OF VALUATION OF SHARES IN INDIAN COMPANIES

S.No.	Name of Company	No. of Shares	Value per Share as on 15-11-1982.	Total Value
1.	Philips India Ltd.	75	29-40	2,205-00
2.	Shree Synthetics Ltd.	25	31-50	787-50
3.	Fri Ram Fibres Ltd.	75	47-00	3,525-00
4.	Vasir Sultan Tobacco Ltd.	770	17-50	13,475-00
5.	Indian Organic & Chemicals	200	28-50	2,850-00
6.	Reckitt & Colman Ltd.	30	27-50	825-00
7.	Indian Tobacco Ltd.	48	35-50	1,695-00
8.	Superior Air Products	100	5-00	500-00
9.	Nagpal Anbadi Petro Chemicals	25	10-00	250-00
		<u>1,200</u>		<u>28,113-50</u>