

CIT Appeals (III)

**FORM No. 35**

(Vide rule 45 of Income-tax Rules, 1962)

**APPEAL TO THE DEPUTY COMMISSIONER (APPEALS) OF INCOME-TAX  
AND COMMISSIONER OF INCOME-TAX (APPEALS)**

Filed on 16/8/93  
at Inland no 604676

\* .....  
§No.....of.....19.....—19.....

Name and address of the Appellant.

**S.M. MOHI MUF (Main)  
1-10-72/2/1, Begumpet  
Hyderabad - 500 016.**

Permanent Account Number.

**45-421-MU-0038**

† Assessment year in connection with which the appeal is preferred.

**1992-93**

Assessing Officer/Valuation Officer passing the order appealed against.

**Ward 1 (10)/ MUD**

Section and sub-section of the Income-tax Act, 1961, under which the Assessing Officer/Valuation Officer passed the order appealed against and the date of such order.

**Intimation u/s. 143(1) (a)  
dated 21-01-1993.**

Where the appeal relates to any tax deducted under section 195(1), the date of payment of the tax.

**Not Applicable**

Where the appeal relates to any assessment or penalty, the date of service of the relevant notice of demand.

**Not Applicable**

In any other case, the date of service of the intimation of the order appealed against.

**16-04-1993**

Section and clause of the Income-Tax Act, 1961, under which the appeal is preferred.

**246**

Where a return has been filed by the appellant for the assessment year in connection with which the appeal is preferred, whether tax due on the Income returned has been paid in full. (If the answer is in the affirmative, give details of date of payment and amount paid).

**Yes. 14-09-91 Rs. 700  
14-03-92 Rs. 8,500  
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Rs. 9,200  
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Where no return has been filed by the appellant for the assessment year in connection with which the appeal is preferred, whether an amount equal to the amount of advance tax payable by him during the financial year immediately preceding such assessment year has been paid. (If the answer is in the affirmative, give details of date of payment and amount paid).

**Not applicable**

‡Relief claimed in appeal.

**As per annexure**

Where an appeal in relation to any other assessment year is pending in the case of the appellant with any Deputy Commissioner (Appeals) or Commissioner (Appeals), give the details as to the—

**- NONE -**

- (a) Deputy Commissioner (Appeals) or Commissioner (Appeals), with whom the appeal is pending;
- (b) assessment year in connection with which the appeal has been preferred;
- (c) Assessing Officer passing the order appealed against;
- (d) section and sub-section of the Act, under which the Assessing Officer passed the order appealed against and the date of such order.

Address to which notices may be sent to the appellant.

**M/S. C. Jay & Co.,  
Chartered Accountants  
C/O. Mohan Automobiles  
2-3-22/6, 54/3, N.G. Road  
Secunderabad - 500 009.**

*Satish Moh.*  
Signed  
(Appellant)

STATEMENT OF FACTS:

Mr. Satish Modi

GROUND OFS OF APPEAL:

Mr. Satish Modi

Signed (Appellant)

FORM OF VERIFICATION

Mr. Satish Modi

do hereby declare that what is stated above is true to the best of my information and belief.

Place: HYDERABAD

Signature.

Satish Modi

Date:

Status of Appellant: Mr. Satish Modi

- NOTES :- (1) The form of appeal, grounds of appeal and the form of verification appended thereto shall be signed by a person in accordance with the provisions of rule 43(2). (2) The memorandum of appeal, statement of facts and the grounds of appeal must be in duplicate and should be accompanied by a copy of the order appealed against and the notice of demand in original, if any. (3) Delete the inappropriate words. (4) These particulars will be filled in, in the office of the Deputy Commissioner (Appeals)/Commissioner (Appeals). (5) Not to be filled in if the appeal relates to tax deducted under section 195(1). (6) If the space provided herein is insufficient, separate enclosures may be used for the purposes. (7) If appeals are pending in relation to more than one assessment year, separate particulars in respect of each assessment year may be given. \* Designation of the Deputy Commissioner (Appeals)/Commissioner (Appeals).

BEFORE THE COMMISSIONER OF INCOME TAX  
(APPEALS) A.P. III/BENGLURU  
IN THE MATTER OF  
S.M. MODI HUF (PLAIN)  
PAN: 45-421-HX-0038, Asst Year 1992-93.

BRIEF FACTS OF THE CASE

The Return of Income for Assessment Year 1992-93 disclosing income of Rs. 30,790/- is filed on 30/08/1992. The Assessing Officer after processing the return u/s. 143 (1) (a), determined the income of Rs. 1,83,760/- . The Assessing Officer has determined the income of Rs. 1,83,760/- in its own unique way, arbitrariness and contrary to law. The manner in which the income is determined by the assessing officer is as under:

- i) The Total credits (i.e. income) of Rs. 200,760.00 <sup>as per</sup> Profit and Loss Account enclosed to Return of Income is taken as total income (as Rental income and interest income). Out of this, deduction of Rs. 17,000/- is made under chapter VI and the net income determined is thus Rs. 1,83,760/-.

By computing the income of Rs. 1,83,760/- in the aforesaid manner following mistakes have been committed by the Assessing Officer.

- i) Against the total expenditure claimed of Rs. 1,52,974.22 (200,760 (-) 4785.78, as per Profit and Loss Account to the return of income is ignored.
- ii) The Assessing Officer have failed to process the return u/s. 143(1) (a) in a manner in which it is required to be done. Adjustments required u/s.143(1) (a) should be made to the income returned. The assessing officer, instead has directly taken the income as Rs. 200,760/- as against the income returned of Rs. 30,790/-.

Further the status of the appellant declared is HUF (specified). Against, this, the intimation u/s.143(1) (a) records the status as 'Individual'.

Against these mistakes an application u/s. 154 dated 16/04/1993 <sup>15/04/1993</sup> under inward no. 100386 <sup>100386</sup> . Since the appellant has not received any modification order within the statutory time limit of three months as provided in proviso to section 154(2) (b), this appeal is being preferred.

Contd....2

*Sahot mdk*

The appellant is a specified HUF deriving its income from business is that of a real estate developer wherein the properties are taken on lease and are developed at the cost of the appellant. In consideration of expenditure incurred on development of the property belonging to the lessor, the appellant enjoys right to use the superstructure so developed. The appellant after developing the property gives and out the same on rent to various parties. The ownership however of the superstructure built up always remain with the land owners (i.e, lessors). Thus the amount received towards rental charges is a business income for the appellant.

The appellant has been deriving this business income from Asst year 1989-90 and onwards.

Against this business income declared by the appellant, the assessing officer has taken the income as Rental Income.

Such change in head of income is beyond the scope of adjustments referred to in Sec 143(1) (a) and is therefore contrary to law. The disallowance of entire expenditure of Rs. 1,52,974.22 is therefore prayed to be allowed and relief be granted in full.

*Suresh Mal.*  
(APPELLANT)

**GROUND OF APPEAL**

1. The learned Officer has erred in holding that the total credit of Rs. 2,00,760/- in profit and loss account enclosed to the Return of Income is income of the appellant as against net *profit* of Rs. 47,785.78.
2. The learned Officer has erred in not <sup>considering</sup> ~~allowing~~ expenditure incurred of Rs. 1,52,974.22 as per debits in profit and loss account against the income of Rs. 2,00,760/-.
3. The learned Officer has erred in holding that Rs. 2,00,786/- is Rental income and interest income, as against business income and interest income declared in the appellant.
4. The learned Officer has erred in stating the status of the appellant as 'Individual' against the declared status of 'HUF (specified)'.
5. Any other ground or grounds that may be submitted at the time of hearing.

*Satish K. Reddy*  
(APPELLANT)

100386

Date: 16.04.93.

From

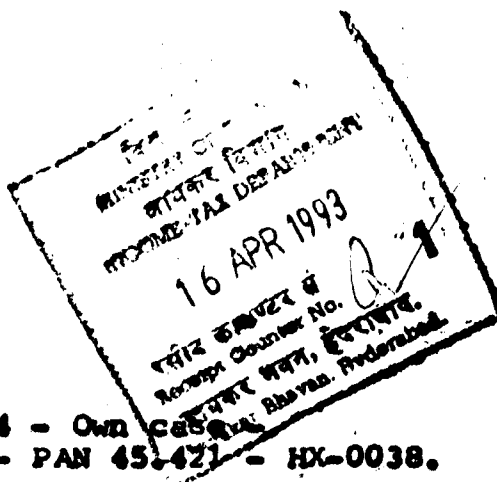
Satish Modi Main HUF,  
1-10-72/2/3,  
Begumpet,  
HYDERABAD - 500 016.

To

The Income Tax Officer,  
Ward 1 (10) HYD.

Sir,

Sub:- Application U/S 154 - Own Case  
Asst. Year 1992-93 - PAN 451471 - HC-0038.



Intimation U/S 143 (1) (a) dated: 05.02.93 for Asst. year 1992-93 is received. Against income returned of Rs.30,790/- the Income after adjustment U/S 143 (1) (a) is determined at Rs.1,83,760/- Following submissions are made for your kind consideration.

1. The status of the assessee is shown as 'Individual' as against Main HUF declared.
2. No reasons are given for adjustments made U/S 143(1)(a). The only reason mentioned is that the income of Rs.2,00,760/- is taken as Rental income and interest income.
3. The income returned is Rs.30,790/- and adjustments to be made U/S 143(1) (a) should have been made to this returned income. On verifying your intimation it is apparent that the same have not been done.
4. As per profit & loss Account the total expenditure is Rs.1,52,974/22 and it appears that the same are disallowed without giving any reasons.
5. The expenditure of Rs.1,52,974/22 includes an amount of Rs.65,000/- contributed to NIMS U/S 35(1) (ii) for which copy of notification is requested in your intimation. The xerox copy of notification U/S 35(1)(ii) is enclosed herewith for your records.
6. An amount of Rs.17,000/- is deducted from a sum of Rs.2,00,760/- in your intimation. The nature of such deduction is not known.

We therefore request you to rectify the intimation U/s. 154 in following manner.

1. Status of the assessee should be taken as HUF(specified) as against individual.
2. The total income should be taken as business income and all the expenditure should be allowed in full.

Thanking You,

Yours faithfully,

*Satish Modi*  
(SATISH MODI).  
Karta of HUF.

1752

# Income Tax Department

INTIMATION UNDER SECTION 143 (1) (a) OF THE INCOME TAX ACT, 1961

PAN  
NAME & ADDRESS  
S. H. KODI  
1-10-75/2/13  
Bengaluru  
Karnataka

A.O. Code.....Ack. No. 713620  
ASST. YEAR.....32-73  
D & CR No.....11(11)P/6/1405  
STATUS.....Retd 2-73  
DUE DATE OF RETURN.....31.8.73  
RETURN FILED ON.....22.8.73

Dear Sir/Madam,

Please refer to your Return of Income for the above Assessment year, The total income-tax and interest payable thereon/refund due to you and the interest thereon have been determined in accordance with section 143 (1) of the income tax, Act. 1961 as under :

### INCOME

Returned Total income/loss 200760 (taken as income under Sec 15 (1) (a) (Rental Income & Interest Income))  
Adjustments u/s 143 (1) (a)  
TOTAL INCOME/LOSS after adjustment u/s 143 (1) (a) 17600  
1,83,760

NET AGL : INCOME

### OTHER INCOME INCLUDED FOR RATE PURPOSES

Components of Total income chargeable at spl. rate of tax

Section	Amount	Rate
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### PREPAID TAXES :

TDS & TAX COLLECTED AT SOURCE	Rs.	
ADVANCE TAX.....	Rs.	9200
SELF ASST. TAX & INTEREST	Rs.	
TOTAL PREPAID TAXES.....	Rs.	9200

P.T.O.

TAXES

Tax on total income 11354  
 Surcharge  
 Addl. tax u/s 143 (1) (a) 1732  
**TOTAL TAX..... 103179**

INTEREST :

U/s 234 A.....  
 U/s 234 B..... 16520  
 U/s 234 C.....

**TOTAL TAX AND INTEREST PAYABLE 128674**  
**LESS: PREPAID TAXES 12000**

**AMOUNT PAYABLE/REFUNDABLE 116474**

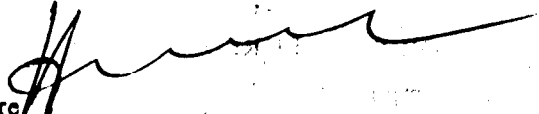
INTEREST PAYABLE TO ASSESSEE

**TOTAL..... 116474**

**NET PAYABLE/REFUNDABLE : 116474**

Date 2-1-53

Place: Hyderabad.

Signature   
 (Name & Designation of the Assessor)  
**INCHARGE HYDERABAD**

NOTE: Reason for not being satisfied for 35(1)(ii) not provided

1. In case you are not satisfied with the additions/disallowances made, you may move an application before your Assessing Office u/s. 154.
2. This intimation is deemed to be a notice of Demand u/s. 156 in terms of section 143 (1) of the I. T. Act, 1961. The amount is required to be paid within 30 (Thirty) days of the service of this intimation failing which you are exposed to action under Sec. 220 (2) & 221 to 229 of the I.T. Act.