

IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH 'B', HYDERABAD.  
BEFORE SHRI R.P. GARG AND SHRI M. RAMAKRISHNA

I.T.A. No. 1273/Hyd/87  
(Asst. Year - 1983-84)

Income-tax Officer,  
Circle-III, Hyderabad.

(Appellant)

V/s.

M/s. Modi Builders,  
Secunderabad.

(Respondent)

Appellant by:- Shri S.C. Jaini  
Respondent by:- Shri Ajay Gandhi

O R D E R

Per M. Ramakrishna, Judicial Member:-

This appeal by the Revenue is directed against the order of the CIT(A)-II, Hyderabad dated 18/03/1987, for the assessment year 1983-84.

2. The grounds of appeal originally taken relate to a sum of Rs. 8,85,241/- (Rupees Eight lakhs eighty five thousand two hundred and fourty one only). The contention of the Revenue is that the CIT(A) erred in holding that the sum of Rs. 8,85,241/- utilised by the assessee in acquiring an interest in property and developing it, in its pursuit of earning income from such an asset is allowable as revenue expenditure, and the CIT(A) also erred in holding that no asset of enduring nature was acquired by the assessee in the process of creating a long-standing income source in making the investment of Rs. 8,85,241/-.

3. The assessee firm filed its return of income for the assessment year 1983-84, on 31/10/1983 declaring a loss of Rs. 1,49,771/- (Rupees One lakh fourty nine thousand seven hundred and seventy one only), which was later revised to Rs. 1,24,770/- (Rupees One lakh twenty four thousand seven hundred and seventy only) by a revised return filed on 10/03/1986. The assessee firm was carrying on business as civil constructors mainly in civil lines. During the year of account, its gross receipts amounted to Rs. 13,14,125/- (Rupees Thirteen lakhs fourteen thousand one hundred and twenty five only) and as per the trading account, its gross profit worked out to Rs. 72,281/- (Rupees Seventy two thousand two hundred and eighty one only). Assessee claimed as allowable expenditure

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a sum of Rs. 88,524/- (Rupees Eighty eight thousand five hundred and twenty four only) against receipts of Rs. 5,100/- (Rupees five thousand one hundred only) in respect of Rasoolpura property and Rs. 3,06,680/- (Rupees Three lakhs six thousand six hundred and eighty only) against receipts of Rs. 12,50,000/- (Rupees Twelve lakhs fifty thousand only) in respect of Methodist Church Complex. Rejecting inter-alia, assessee claim for expenditure, the assessing officer made an addition of Rs. 8,85,241/- in respect of Rasoolpura Property. On appeal, the CIT(A) deleted the said addition observing that the expenditure of Rs. 8,85,241/- incurred on the development of the land in question at Rasoolpura, was an allowable revenue expenditure. Aggrieved by the order of the CIT(A) Revenue is in further appeal before us.

4. We have considered the rival submissions, and perused the paper-book filed by the assessee. By an agreement dated 01/11/1981 between Shri Satishchandra Modi and Modi Builders, a copy of which is filed at pages 40 to 44 of the paper-book the assessee was to develop 26,991 Sq.ft., of land at Survey No. 13/2 Rasoolpura, Secunderabad, and it was permitted to make construction on that land, as per the directions and approval of the municipal authorities in the name and on behalf of the Investa Chemicals, but at its cost and expense. As per clause 6 of the agreement dated 01/11/1981, Modi Builders, the assessee herein was to pay by the 5th of every month licence fee of 25 ps., per Sq.ft., of the area on which it made construction. During the previous year ended on 31/07/1982, the assessee claimed to have incurred expenditure of Rs.8,85,241/- on the development of the above property. Assessee's claim for the above expenditure was rejected by the assessing officer whereas the CIT(A) allowed it holding the same to be revenue expenditure. We find that the Tribunal considered this issue in the case of Sri Satishchandra Modi, Secunderabad in its order dated 12/03/1993 (ITA No. 103-104/Hyd/88) for assessment years 1983-84 and 1984-85 and in its order dated 18/03/1994 for assessment year 1988-89 in ITA No. 1117/Hyd/92, wherein it was held that the expenditure incurred by the assessee in the development of Rasoolpura Property is one incurred by him in the course of carrying on his business activity and it is an allowable expenditure and it is not capital in nature vide pages 1 to 26 of the paper-book filed by the assessee. Respect fully following the said decisions of the Tribunal, we uphold the order of the CIT(A) on this point and reject Revenue's grounds.

5. By the petition dated 14/06/1994, Revenue sought to raise an additional ground to the effect that the CIT(A) has erred in deleting the addition of Rs. 3,06,680/- as the expenses incurred for the development of the property by the assessee are reimbursable and the salvage value of the building existing on the site earlier belongs to the assessee, i.e., developer and the assessee is not entitled to deduction of expenditure. On careful consideration of the rival submissions, we admit this ground and proceed to dispose of the same on merits.

6. The assessee firm has shown contract receipts of Rs. 12,60,000/- and claimed deduction of expenditure of Rs. 3,06,680/- against the said receipts in respect of Methodist Church Complex. This construction was governed by an agreement dated 09/01/1982. By another agreement dated 22/02/1982, the benefit of the agreement dated 09/01/1982 between the assessee firm and Methodist Church was transferred for a consideration of Rs. 12,50,000/-. This amount of Rs. 12,50,000/- was credited to the trading account and the corresponding expenditure of Rs. 3,06,680/- has been debited to the same account. This amount of Rs. 3,06,680/- was claimed as an allowable expenditure. The assessing officer disallowed this expenditure holding that the net consideration of Rs. 12,50,000/- represented the consideration for transfer of rights. On appeal the CIT(A), deleted the addition observing that as Rs. 12.5 lakhs received by the assessee from Sri Parmanand H. Bajaj in terms of agreement dated 22/02/1982 was assessed by the ITO relating to the same property in respect of which the assessee claimed expenditure of Rs. 3,06,680/-, the disallowance of the expenditure is not warranted.

7. We have considered the rival submissions. As copy of the agreement between the assessee and Shri Parmanand H. Bajaj dated 22/02/1982 is placed at pages 45 to 68 of the paper-book. Similarly a copy of the assessee's agreement with Methodist Church dated 09/01/1981 is placed at pages 69 to 80. Clause-2 of the agreement dated 22/02/1982 between the assessee and Parmanand H. Bajaj provided for the payment

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of Rs. 12,50,000/- by the Builder i.e., Parmanand H. Bajaj, to the Developer, the assessee, which included a sum of Rs. 1,50,000/- (Rupees One lakh fifty thousand only) as initial earnest money on the signing of the said agreement and balance amount of Rs. 11,00,000/- (Rupees Eleven lakhs only) in three spells of Rs. 1,00,000/- (Rupees One lakh only) on 30/04/1982; of Rs. 5,00,000/- (Rupees Five lakhs only) each on 31/05/1982 and 30/06/1982. Clause-19 of that agreement provided that the salvage value of the material that would be obtained on demolition of old structure would belong to the Developer alone, as the Developer has informed the Builder that the Developer has paid to the owner a sum of Rs. 50,000/- as compensation for the salvage material in accordance with clause-3 of the development agreement, the assessee had with the owner. Considering the various clauses of these two agreements, and the reasoning given by the CIT(A) in his impugned order, we find that the addition made by the assessing officer was unwarranted, and the CIT(A) as Justified in deleting the same holding it as revenue expenditure. We accordingly uphold the order of the CIT(A) on this point as well, and reject the Revenue's additional ground of appeal.

8. In the result, Revenue's appeal is dismissed.

(R.P. Garg)  
Accountant Member.

(M. Ramakrishna)  
Judicial Member.

HYDERABAD, DT/- 10TH OCTOBER, 1994.

Copy of the order forwarded to :

- (1) ITO, D-Ward, Circle-III, Hyderabad.
- (2) M/s. Modi Builders, House No. 1, Begumpet, Hyderabad.
- (3) CIT(A)-II, Hyderabad.
- (4) CIT.
- (5) D.R., I.T.A., Hyderabad.