

6/K ✓ 3000/-

APPELLATE
~~XXXXXXXXXX~~ COMMISSIONER

IN THE OFFICE OF THE

OF INCOME TAX. (APPEALS)-III Range _____

**Sri V.M. Muthuramalingam,
Commissioner of Incometax,
(Appeals)-III, Hyderabad.**

Date of Order : 21-4-1988
Income-tax Appeal No. : ITA Nos. 84 & 85/III(D)/
CIT-III/86-87

Instituted on the 18-12-86

From the order of the Income-tax Office of ITO, D-Ward, Circle-III, Hyd.
(Sri A. Subba Rao)

1. Year of assessment : 1983-84
2. Name of the Appellant : M/s. Modi Builders,
Secundrabad.
3. Income assessed : Penalties U/s. 221(1)
4. Tax demanded $\frac{\text{Income-tax}}{\text{Super-tax}}$: Rs. 15,000/- and Rs. 25,000/-
5. Section under which assessment was made : 221(1)

Date of hearing : 20-4-1988
Present for Appellant : Sri Anil Kumar B. Vithalani, C.A.,

APPELLATE ORDER AND GROUND OF DECISION

ITA Nos. 84 & 85/III(D) CIT-III/86-87

There has been a delay of 20 days and 12-days in filing the appeals in ITA No. 85/III(D)/CIT-III/86-87 and 84/III(D)/CIT-III/86-87 (Asst. year 83-84). In the letter seeking condonation of delay, the appellant's representative submits that he was busy with matters relating to a search and seizure case handled by him and that for this reason, the filing of appeal got delayed. Having regard to this submission, I condone the delay and admit the appeal.

2. These two appeals are grouped together for disposal as they relate to levy of penalty U/s. 221(1) of the Act. Sri Anil Kumar B. Vithalani, C.A., was heard for the appellant.

...2..

3. The appellant is a registered firm engaged in building activity. For the assessment year 1983,84, it had filed a return claiming a loss of Rs.1,49,771/-. In the assessment order passed U/s.143(3) on 27-3-86, the ITO assessed the appellant on an income of Rs.10,69,180/-. The tax demand including interest was Rs.4,04,854/-. The appellant had appealed against this order. During the pendency of appeal, the ITO called upon the appellant to pay the arrears of demand of Rs.4,04,854/-. It appears that there was no response to several show cause notices issued in August,86. Ultimately, Sri Anil Kumar B.Vithalani, C.A., appeared before the ITO on 13-10-86 and stated that he would ask his client to make arrangements for the payment of taxes. The ITO who passed the penalty order on 24-10-86 observed that the Department had given sufficiently long time to the appellant. He thought that the appellant was bound to pay the tax raised for valid and substantial reasons. He was of the view that since the appellant had not responded to several opportunities given, it had to be categorised as a recalcitrant assessee and treated as such. He, therefore, levied a penalty of Rs.15,000/- U/s.221(1) of the Act for non payment of regular demand of Rs.4,04,854/-.

4. Another penalty U/s.221(1) was passed on 3-11-86. In this order, the ITO noting that there was no response to the show cause notice, levied a penalty of Rs.25,000/- for non-payment of tax arrears of Rs.4,04,854/-.

5. Before me, the appellant contends that the levy of penalty U/s.221(1) on 24-10-86 and 3-11-86 is wholly unjustified, that the demand itself arose as a result of arbitrary and heavy assessment, which was challenged before the CIT(Appeals) and therefore, the penalty orders have to be cancelled.

6. At the time of hearing, learned representative of the appellant Sri Anil Kumar B.Vithalani, C.A., produced a copy of the appellate order in the appellant's case dated 18-3-1987 for the assessment year 1983-84, in which

contd.....3..

ITA Nos. 84&85/III(D)/CIT-III/86-87

the CIT(Appeals)-II, Hyderabad, gave a relief of Rs.11,93,571/-. This means that the tax payable became nil as a result of the appellate order. The tax demanded amounted to several times the capital of the partners of the appellant. There was no way by which the appellant firm could pay the demand, which was raised on rather flimsy and untenable grounds. It is rather unfortunate that the ITO ignored all these facts and levied huge penalties. The fact that within a span of 10-days, he levied a penalty of Rs.40,000/- in respect of disputed demands also smacks of certain vindictiveness. I am of the view that there was absolutely no case for levy of penalty U/s.221(1) of the Act in the appellant's case. Therefore, the penalties levied on 24-10-86 and 3-11-86 are cancelled.

7. Appeals allowed.

Sd/- xx
(V.M. MUTHURAMALINGAM)
Commissioner of Incometax,
(Appeals)--III, Hyderabad.

Copy of the Order Forwarded to

1. Appellant with D.N.S(2)
2. I.T.O. with records
3. CIT. A.P., Hyderabad.
4. IAC of Incometax.

CERTIFIED TRUE COPY

Sd/-
Commissioner of Incometax,
(Appeals)-III, Hyderabad.

//true copy//

1163

PROCEEDINGS OF THE INCOME TAX OFFICER, D.WARD, CIR,III,
HYDRABAD.

Sri A.Subba Rao, IRS.
Income Tax Officer

GIR.NO. M-303/III-D/Hyd.

Dt. 31st March, 1987.

Sub: I.T.Assessment Year 1983-84 -
M/s. Modi Builders, 1-10-72/2/3, Begumpet
Secunderabad - Passing of Modification
order - regarding -

Ref: CIT's order in ITA.NO.57/III-D/CIT-II/86-87
dt. 18-3-1987

-:-

MODIFICATION ORDER :-

Consequent on appeal reduction allowed by
the Commissioner (Appeals)-II, vide ITA.No.57/III-D/CIT-II/
1986-87 dt.18.3.1987, the total income of the assessee is
computed as under:-

Total Income determined as per Assessment order 27.3.1986	10,69,130
Less: Reduction allowed by the CIT(A)-II.	11,93,571

Revised Total Income Rs.	1,24,391(-)
	=====

The assessee is not entitled for carry-forward
of loss as the Return for 1983-84 was filed out
of time i.e. late.

<u>Allocation</u>	<u>Share</u>	<u>Sh. of loss</u>
Satish Modi, Karta of HUF Tarulata Modi & Bohan Modi	5%	6219(-)
Mahesh K. Desai S/o Kantilal Desai as Trustee of MSM Associates, a determined trust	95%	1,18,172(-)
	-----	-----
Total	100	1,24,391(-)
	=====	=====

AK
1/4/87
at 10 AM

(A.Subba Rao)
Income-tax Officer, D-Ward, Cir-III,
Hyderabad.

copy to the assessee

TDN/*

13