

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE SHRI O.P.KANT, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1879/Del./2018
ASSESSMENT YEAR : 2014-15**

ACIT,
Circle-17(1)
New Delhi

vs. M/s. Modi Industries Ltd.
Modi Nagar, U.P
New Delhi
(PAN : AAACM2063Q)

(APPLICANT)

(RESPONDENT)

REVENUE BY : Shri Atiq Ahmed, Senior DR
ASSESSEE BY : Shri Robifyain Adv. Sh. Arpit Goyal, CA

Date of Hearing : 15.04.2021

Date of Order : 11.06.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Asstt. Commissioner of Income Tax, New Delhi
(hereinafter referred to as 'the revenue') by filing the present
appeal sought to set aside the impugned order dated 22.12.2017
passed by the Commissioner of Income-tax (Appeals)-22, New
Delhi qua the assessment years 2014-15 on the grounds inter alia
that :

*“1. Whether in facts and on circumstances of the case,
the Ld. CIT(A) is legally justified in holding that the income
from letting out of some of business assets of the assessee*

company was in nature of “Income from House Property” by ignoring the ratio decidendi of Hon’ble Supreme Court in case of Universal Plast Limited vs. CIT(1999) 237 ITR 454?

2. Whether in facts and on circumstances of the case, the Ld. CIT(A) is legally justified in allowing relief to the assessee on the basis of its earlier orders in the assessee’s own case by ignoring decision of Hon’ble Apex Court in case of Universal Plast Limited vs. CIT (Supra) and despite the fact that principle of res-judicata is not applicable to Income Tax proceedings as each assessment year is a separate year?

3. That the appellant craves leave to add, amend, alter or forgo any ground (s) of appeal either before or at the time of hearing of the appeal.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee is a multi unit manufacturing company. AO noticed that the assessee has gross income under the head “Income from House Property” at Rs. 1,72,39,509/- being the rent received from land given on rent to various persons, outsiders and sister concerns. Declining the contention raised by the assessee that this income is income from house property, AO proceeded to treat the same as ‘business income’ as the said premises rented out by the assessee from part of fixed assets in the assessee’s balance sheet on which incidental expenses has been claimed and allowed by the revenue, and as such taxed the same as ‘Business Income’.

3. Assessee carried the matter before Ld. CIT(A) by way of filing the appeal who has deleted the addition by partly accepting appeal. Feeling aggrieved the revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly assessee has earned total rental income at Rs. 1,95,47,009/-, out of which assessee itself has treated an amount of Rs. 23,07,500/- as 'Business Income' against which expenses have already been claimed by the assessee. It is also not in dispute that in the earlier assessment year for A.Y. 2011-12 assessee's claim to treat the rental income from its steel unit including that from buildings and quarters have been accepted by the Co-ordinate bench of Tribunal in ITA No. 1702/Del./2015, ITA No. 2640/Del/2015 , vide order dated 20.11.2015 in assessee's own case.

6. We have perused the order passed by co-ordinate bench of Tribunal in assessee's own case for A.Y. 2011-12 wherein proposition mooted out by the assessee that the rental income from letting out steel units and quarter situated in the steel units is to be

treated as “income from house property” has been accepted by returning the following findings :-

“ It is submitted that there is no error in the order of the CIT(A) holding that rental income of the steel unit is assessable as “income from house property”, as declared by the assessee. While doing so, he has followed the First Appellate Order in the case of the assessee for the assessment year 2010-11. He reproduced the relevant portion of the said First Appellate Order wherein it has been mentioned that in the earlier assessment years 2007-08, 2009-10 and 2010-11 under similar facts, it has been held that income derived from letting out of building and quarters in respect of steel unit is assessable to tax under the head “income from house property”. Thus, in view of the principles of consistency, the Learned CIT(Appeals) was justified in allowing the claimed income from house property. The same is upheld. The ground is accordingly rejected.”

7. Ld. DR for the revenue has failed to bring on record any change in the facts and circumstances of the case to treat the income by way of rental income earned by the assessee from letting out of steel units and quarters situated therein to be treated as business income. When there is no change in the facts and circumstances of the case, and this rental income has been accepted as income from the house property in earlier assessment years for 2007-08, 2009-10, 2010-11 and 2011-12, there is no ground to depart from the “principles of Consistency”. So finding

no illegality or perversity in the impugned order passed by Ld. CIT(A), the appeal filed by the revenue is hereby dismissed.

Order pronounced in open court on this 11th day of June, 2021.

Sd/-

(O.P.KANT)

ACCOUNTANT MEMBER

Dated the 11th day of June, 2021

Binita

Sd/-

(KULDIP SINGH)

JUDICIAL MEMBER

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.