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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA No. 503/2017**

+ **ITA No. 504/2017**

**PR. COMMISSIONER OF INCOME
TAX-6, NEW DELHI**

..... Appellant

Through: Mr. Asheesh Jain, Sr. Standing
Counsel with Mr. Vikrant A. Maheshwari,
Advocate.

versus

MODI INDUSTRIES LTD.

..... Respondent

Through: Mr. Rohit Jain, Advocate with
Mr. Aniket D. Agrawal, Advocate.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

ORDER

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09.08.2017

C.M. No. 24209/2017 (exemptions) in ITA No. 504/2017

1. Allowed subject to all just exceptions.

C.M. No. 24205/2017 (delay) in ITA No. 503/2017

C.M. No. 24208/2017 (delay) in ITA No. 504/2017

2. For the reasons stated in the applications, the delay in filing is condoned and the applications are disposed of.

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3. The Revenue is in appeal against the impugned order dated 25th October, 2016 passed by the Income Tax Appellate Tribunal ('ITAT')

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for the Assessment Year ('AY') 2007-08 in ITA No.733 and 788/Del/2013.

4. The question that arose before the ITAT was whether the income from the three properties given on rent by the Assessee should be treated as business income or income from house property?

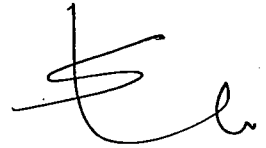
5. Before the Assessing Officer ('AO'), the Assessee contended that the income in question had always been assessed as 'income from house property' from AY 1964-65 onwards under Section 22 of the Income-tax Act, 1961 ('Act'). The learned AO, in para 2.1.1 of the assessment order dated 28th December 2009, however, noted the above position but took a different stand in the AY in question only because, according to him, "a wrong decision should not be allowed to be carried on without rectifying it".

6. While the AO's decision to take it upon himself to right what he considered to be wrongs committed in the preceding years is questionable, the ITAT has, in the impugned order, taken note of the fact that income from at least two of the three properties in question had been consistently treated as income from house property and accepted as such by the Revenue. Regarding the income from the third of those properties, although a remand was ordered by the ITAT to the AO for redetermination, the Assessee has chosen not to go in appeal since the amount involved was insignificant.

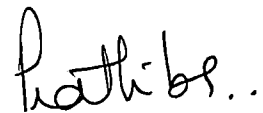
7. The plea of the Revenue that, even in respect of the other two properties, the order should be remanded to the AO does not find favour with the Court. Unless any material change in the circumstances has occurred from the earlier AYs, where the income from the letting of the premises has been

consistently treated as income from house property, there was no occasion for a changed stand on the part of the Revenue.

8. No substantial question of law arises for consideration. The appeals are dismissed.



S. MURALIDHAR, J.



PRATHIBA M. SINGH, J.

AUGUST 09, 2017
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