IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

TUESDAY,THE SIXTH DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE SUDDALA CHALAPATHI RAO

INCOME TAX TRIBUNAL APPEAL NO: 19 OF 2021

(Income Tax Tribunal Appeal under Section 260 A of the Income Tax Act., 1961 against the order made in I.T.A.No.1292/Hyd/2016 for the Assessment year 2012-13 Dated 28.09.2020 on the file of the Income Tax Appellate Tribunal, Hyderabad "B" Bench, Hyderabad preferred against the Order of the Commissioner of Income Tax in Appeal No.0157/DCIT, Cir.16(1)/15-16/CIT(A)-4/Hyd/2016-17 Date 18.07.2016 preferred against the Order of the Dy.Commissioner of Income Tax, Hyderabad made in PAN/GIR No.AADCM8355N Dated 31.03.2015.

Between:
M/s. Modi Shelters Pvt Ltd., A company incorporated under the Companies Act, 1956, having its registered office at 8-2-120/76/A/B/16, 17, 18, 4th Floor, Ashoka Hitech Chambers, Road No. 2, Banjara Hills, Hyderabad-34 Represented by its Managing Director Mr. Sourabh Modi, R/o. Hyderabad.

...APPELLANT

AND

Dy. Commissioner of Income Tax, Circle -16(1), 1st floor, Block-B, I.T Tower, Masab Tank, Hyderabad.

...RESPONDENT

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to pass an order staying the collection of the disputed demand of Rs. 41,02,420/- in the appeal for the assessment year 2012-13 filed against the order passed by the Income Tax Appellate Tribunal, Hyderabad B Bench in ITA No. 1292/Hyd/2016 dated 28-09-2020

Counsel for the Appellant : Ms.K.PRABHAVATHI, REP. M/S. R.S. ASSOCIATES

Counsel for the Respondents : SRI K. SUDHAKAR REDDY (Sr SC FOR INCOME TAX)

The Court made the following: JUDGMENT

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
HON'BLE SRI JUSTICE SUDDALA CHALAPATHI RAO

ITTA NO.19 OF 2021

DATE: 06.01.2026

Between:

M/s. Modi Shelters Pvt. Ltd.,
a Company incorporated under the Companies
Act, 1956, having its Regd.Office at 8-2-120/76/A/B/16, 17, 18,
4th Floor, Ashoka Hitech Chambers, Road No.2, Banjara Hills,
Hyderabad, rep.by its Managing Director.

.... Appellant

and

Dy.Commissioner of Income Tax,
Circle-16(1), 1st Floor, Block-B, IT Tower,
Masab Tank, Hyderabad.

.... Respondent

JUDGMENT: ***(per Hon'ble Sri Justice P.Sam Koshy)***

Heard Ms. K.Prabhavathi, learned counsel for the appellant and Mr. K.Sudhakar Reddy, learned Senior Standing Counsel for the Income Tax Department for the sole respondent.

2. The question of law involved in the instant appeal is, whether the terrace/balcony that is in the form of open to sky or portico/ porch area without walls could be included in computing the

built-up area for the purposes of determining eligibility for deduction under Section 8-IB of the Income Tax Act, 1961.

3. The question of law in the instant Appeal is one, which came up for consideration before this Division Bench in ITTA No.167 of 2012 and batch matters, of which one of the Appeals i.e., ITTA No.230 of 2016 was pertaining to the very same assessee, whose Appeal is the present one, stood decided by this Division Bench *vide* common judgment pronounced on 21.05.2025, thereby this Division Bench while allowing the Appeals had endorsed the view of the Division Bench of High Court of Gujarat in the case of **Commissioner of Income Tax vs. Amaltas Associates**[1].

4. The factual matrix and the question of law involved in the instant Appeal are also identical. We are, therefore, of the considered opinion that present Appeal is squarely covered by the decision rendered by this Division Bench on 21.05.2025, for the aforesaid reasons, which apply equally to the present appeal itself.

[1] 2016 SCC Online Guj 4685

5. In view of the same, the present Appeal stands allowed and the question of law stands answered in favour of the assessee and against the respondent. There shall be no order as to costs.

Pending miscellaneous applications if any shall stand closed.

Sd/- M.VIJAYA BHASKER
JOINT REGISTRAR

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SECTION OFFICER

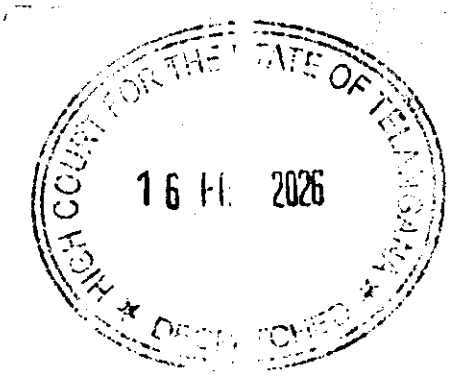
To,

1. The Income Tax Appellate Tribunal, Hyderabad "B" Bench, Hyderabad
2. The Commissioner of Income Tax, (Appeals) 4, Hyderabad
3. The Dy.Commissioner of Income Tax, Hyderabad
4. One CC to M/s R.S.Associates , Advocate (OPUC)
5. One CC to Sri K.Sudhakar Reddy, Advocate (OPUC)
6. Two CD Copies

Ks/ba

HIGH COURT

DATED:06/01/2026



JUDGMENT

ITTA.No.19 of 2021

ALLOWING THE APPEAL WITHOUT COSTS.

(8)
22/01/26