

**(2000) 04 DEL CK 0035**

**Delhi High Court**

**Case No:** IT Case No. 23 of 1999 19 April 2000 A.Y. 1989-90

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

NEO POLY PACK (P) LTD.

RESPONDENT

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**Date of Decision:** April 19, 2000

**Citation:** (2000) 112 TAXMAN 363

**Hon'ble Judges:** D.K. Jain, J; D. K. Jain, J; Arun Kumar, J

**Bench:** Full Bench

**Advocate:** Mrs. Prem Lata Bansal, for the Revenue Salil Aggarwal, for the Assessee, for the Appellant;

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### **Judgement**

@JUDGMENTTAG-ORDER

By this petition u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') the revenue seeks a direction to the Tribunal to state the case and refer the following question, said to be one of law, for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the rent received from factory building is to be assessed as 'income from business' and not under the head 'Income from house property'?"

2. The petition pertains to the assessment year 1989-90 for which the relevant accounting period ended on 31-3-1989. In its annual accounts for the relevant assessment year, forming part of the return of income, the assessee, a private limited company, claimed depreciation on the factory building owned by it. However, during the course of the assessment proceedings the assessing officer was of the view that the income derived by the assessed by letting out the factory building was to be assessed as "income from house property" and not as 'business income as' declared by the assessee. He, accordingly, allowed statutory deduction, u/s 24 of the Act to the assessed and brought the said income to tax under the head 'income from house property'.

3. Aggrieved, the assessed preferred an appeal to the Commissioner (Appeals) who, after calling for remand report from the assessing officer, came to the conclusion that the factory building continued to be a commercial asset of the assessed inasmuch as the assessed was carrying on its business in the said premises and only a part of it had been let out. He, accordingly, treated the rental income as business income and allowed depreciation claimed by the assessee.

4. Being aggrieved, the revenue took the matter in further appeal to the Tribunal. The Tribunal found that in all earlier years starting from the assessment year 1984-85, the income derived by the assessed from the factory building had been treated as "income from business" by the assessing officers themselves. Observing that no distinguishing feature had been pointed out in the present year, the Tribunal affirmed the view taken by the Commissioner (Appeals). The revenue's application u/s 256(1) having been dismissed, the present petition has been filed.

5. Having heard Mrs. Prem Lata Bansal, the learned counsel for the revenue and Mr. Salil Aggarwal, the learned counsel for the assessed we are of the view that no fault can be found with the order of the Tribunal declining to make reference on the proposed question. It is true that each assessment year being independent of each other, the doctrine of res judicata does not strictly apply to the Income Tax proceedings, but where an issue has been considered and decided consistently in a number of earlier assessment years in a particular manner, for the sake of consistency, the same view should continue to prevail in the subsequent years unless there is some material change in facts. In the present case, the learned counsel for the revenue has not been able to point out even a single distinguishing feature in respect of the assessment year in question which could have prompted the assessing officer to take a view different from the earlier assessment years in which the same income was brought to tax as income from business.

6. The petition is, accordingly, dismissed with no order as to costs.