R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WEALTH TAX APPEAL NO. 516 OF 2016
WITH
WEALTH TAX APPEAL NO. 520 OF 2016

Pr. Commissioner of Wealth Tax (Central) .. Appellant

Versus

Taradevi Ratanlal Bafna .. Respondent

....

- Mr. Suresh Kumar for the Appellant
- Mr. Mihir Naniwadekar a/w Mr. Ruturaj Gurjar for the Respondent

....

CORAM : AKIL KURESHI &
B.P. COLABAWALLA, JJ.

DATE : JANUARY 7, 2019.

P.C.:

1. These appeals arise out of the common background. We may refer the facts from Wealth Tax Appeal No. 516 of 2016.

2. Wealth Tax Appeal No. 516 of 2016 is preferred by the revenue challenging the judgment of the Income Tax Appellate Tribunal ("Tribunal" for short) dated 8.7.2015. Following questions are presented for our consideration:-

"(a) Whether on the facts and circumstances of the case and in law, the Tribunal is justified in upholding the decision of the CWT(A) in respect of giving relief to the assessee regarding three separate units of properties situated at different locations of Mumbai, despite the fact that these properties have been let out on rent and the assessee is not in the business of letting out business premises?

(b) Whether on the facts and circumstances of the case and in law, the Tribunal is right in ignoring the fact that the properties are not within the purview of assets to be exempted u/S 2(ea)(i)(5) of the Wealth Tax Act, as no business or professional activities were carried out by the assessee, and further, being single unit at its respective location, does not qualify to be treated as commercial complex, which is the condition to be eligible for commercial complex as well as assets to be exempted, as laid down in Section 2(ea)(i)(5) of the Wealth Tax Act?"

3. The respondent - assessee is an individual. The issue pertains to her wealth tax return for the assessment year 2010-11 and revolves around interpretation of Section 2(ea) of the Wealth Tax Act, 1957 ("the Act" for short) defining the term "assets".

4. The assessee holds three separate units located at different places which were rented out to the Oriental Bank of Commerce and thus, put to commercial use. The assessee contended that the establishments being in the nature of commercial establishments, would be excluded from the definition of term "assets" by virtue of exception (5) to clause (i) to Section 2(ea) of the Act. The revenue opposed the contention. The assessing officer held that the single unit cannot be excluded since in the exception clause, the word used is "commercial establishments" as in plural. The objection of the revenue also appeared to be on the ground that the rental income was offered by the assessee as income from house property in income tax return.

5. The issue eventually reached the Tribunal. The Tribunal confirmed the view of the appellate authority and dismissed the revenue's appeal. The Tribunal referred to and relied upon a decision of the Division Bench of Gujrat High Court in the case of **CIT, Rajkot-II Vs. Vasumatiben Chhaganlal Virani**[1] and rejected the revenue's contention.

6. Section 2(ea) of the Act defines the term "assets"; as per clause (i) in relation to assessment year commencing on 1.4.1993 or any subsequent assessment year as to mean

1 [2013[37 taxmann.com 216 (Gujarat)

any building or land appurtenant thereto whether used for residential or commercial purposes or for the purpose of maintaining a guest house or otherwise including a farm house situated within the specified distance of local limits of Municipal Corporation or Cantonment Board. This clause has five exceptions. Exception 5 reads thus:-

> "(5) any property in the nature of commercial establishments or complexes;"

7. In plain terms, therefore, any property in the nature of commercial establishments or complexes would be excluded from the definition of term "assets" even if otherwise it falls under clause (i) of the said definition clause. Thus, as long as the property in question is a commercial establishment or complex, this exclusion clause would apply. This exclusion clause nowhere requires that to fall within this exception, the property in question must have multiple units in the nature of commercial establishments. The revenue's stress on the word "establishments" used in plural, is not quite acceptable. The term "commercial establishments" is used to exclude all commercial establishments and is not meant to restrict the application of exclusion clause only to commercial establishments which have multiple units.

8. Further the Division Bench of Gujrat High Court in the case of Vasumatiben C. Virani (supra) in slightly different context while referring to the said exception clause (5) had made following observations:-

> "8. To our mind sub-clause (5) of clause (i) of section 2(ea) nowhere requires that a commercial establishment or a complex cannot be established in a house property. It only provides that any property in the nature of commercial establishment or complexes shall be excluded from the term assets as defined in clause(i) of section 2(ea). Further that it nowhere provides that only if such commercial complex is occupied by the owner then alone the exclusion shall take effect. On both counts thus contention of the Revenue cannot be accepted. It is significant to note that exception sub-clause (3) of clause (i) of section 2(ea) pertains to any house which the assessee may occupy for the purposes of any business or profession carried on by him. Thus whenever legislature desired that exclusion may apply only if property is self occupied, it was so provided. Significantly, in sub-clause (5), there is no such insistence."

9. In the result, no question of law arises. Tax appeals are dismissed.

[B.P. COLABAWALLA, J.] **[AKIL KURESHI, J]**