

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08-09-2016

Coram:

The Hon'ble Mr.Justice NOOTY. RAMAMOHANA RAO
AND
The Hon'ble Dr. Justice P.DEVADASS

TAX CASE APPEAL Nos.961 to 963 of 2007

The Karur Vysya Bank Ltd.,
Central Office,
Erode Road,
Karur.

.. Appellant in all Appeals

Vs.

The Commissioner of Income-Tax,
Trichy.

.. Respondent in all Appeals

Appeals under Section 27A of the Wealth Tax Act, 1957, against the common order of the Income Tax Appellate Tribunal, 'D' Bench, Chennai, dated 16.12.2005 in WTA Nos.45 to 47/MDS/2005.

For Appellant in all Appeals .. Mr.N.Quadir Hoseyn.

For Respondent in all Appeals.. Mr.J.Narayanaswamy,
Standing Counsel.

COMMON JUDGMENT

**(Judgment of this Court was delivered by NOOTY.
RAMAMOHANA RAO, J)**

These Tax Case Appeals are preferred by the Assessee under Section 27A of the Wealth Tax Act, 1957, aggrieved by the orders passed by the Income Tax Appellate Tribunal 'D' Bench, Chennai, by its order dated 16.12.2005, for the assessment years 1999-2000, 2000-2001 and 2001-2002. The following substantial questions of law have been raised:-

"(i) Whether on the facts and in the circumstances of the case, the Tribunal ought to have seen that the reopening of assessment was not in accordance with law?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was correct in not allowing the claim of deduction of proportionate liability from the gross wealth of the appellant?

(iii) Whether the Tribunal was justified in rejecting the computation of net wealth made by the appellant in accordance with Rule 14 of Schedule III to the Wealth Tax Act?

(iv) Whether the Tribunal was not correct in applying Section 7 r/w Schedule

III, Rule 14 for arriving at the net taxable wealth of the appellant-Bank?"

2. The Assessee was carrying on Banking business. It has filed its Wealth Tax Return for the assessment year 1999-2000, on 15.10.2001, admitting the net-wealth at Rs.1,81,000/-. The said Return was processed under Section 16(1) of the Wealth Tax Act, on 28th March 2002. Subsequently, this assessment was reopened under Section 17 of the said Act, to verify the correctness of the assessee's claim towards proportionate liability of Rs.1,67,29,000/- from the taxable wealth of Rs.1,69,10,000/-. In response to the notice under Section 17, the Assessee Bank filed its Return, admitting the taxable wealth as Rs.1,81,000/- only. The Assessing Officer passed orders, assessing the taxable wealth as Rs.2,19,52,000/- and the tax payable thereon as Rs.2,19,520/-. He has taken into account the depreciation statement filed for the purpose of assessment of income tax as on 31st March 1999, for determining the wealth of the 3 assets, viz., quarters, building-sites purchased during the year that ended on 31st March 1999 and the Motorcars.

3. The Assessee preferred appeals to the Commissioner of Income Tax Appeals, who, by his order dated 31st January, 2005,

rejected the 3 appeals. The Income Tax Appellate Tribunal, which has been approached by the Asseessee, had also rejected the appeals preferred by the Assessee and hence, the present Appeals.

4. Before proceeding any further, it would only be appropriate to notice the definition of the expression 'assets' assigned by the Wealth Tax Act, 1957. The following is the meaning assigned to the said expression:

"[(ea) "assets", in relation to the assessment year commencing on the 1st day of April, 1993, or any subsequent assessment year, means-

[(i) any building or land appurtenant thereto (hereinafter referred to as "house"), whether used for residential or commercial purposes or for the purpose of maintaining a guest house or otherwise including a farm house situated within twenty-five kilometres from local limits of any municipality (whether known as Municipality, Municipal Corporation or by any other name) or a Cantonment Board".

5. Any building or land appurtenant thereto, whether used for residential or commercial purposes or for the purpose of

maintaining a guest house or otherwise answers the description of an asset. But, however, the following 5 items are declared as not included therein:

"(1) a house meant exclusively for residential purposes and which is allotted by a company to an employee or an officer or a director who is in whole-time employment, having a gross annual salary of less than five lakh rupees;

(2) any house for residential or commercial purposes which forms part of stock-in-trade;

(3) any house which the assessee may occupy for the purposes of any business or profession carried on by him;

(4) any residential property that has been let-out for a minimum period of three hundred days in the previous year;

(5) any property in the nature of commercial establishments or complexes.]".

6. The very first item excluded clearly brings out that the house, meant exclusively for residential purposes and which is allotted to by a Company to a Whole-Time Director having a gross annual salary of less than five lakh rupees, is thus kept outside the purview of the expression 'asset'. Therefore, the Assessing Officer is required to

find out as to whether the building, which the Assessee, has allotted for its Chairman for residential purposes, still falls within the expression 'assets' or not. The requirement in that regard being that the Chairman should not have been remunerated as salary of less than five lakh rupees. It is hardly in doubt that the Assessee being a Company and its Chairman, is a Whole Time Director and therefore, the remuneration paid to such a Whole Time Director by the Assessee ought to have been ascertained and only in that event, if the salary so paid is more than Rs.5 lakhs, such a residential quarters can be included and be treated as an 'asset' of the Assessee for the purpose of the Wealth Tax. Unfortunately, neither the Assessing Officer nor the Appellate Authority made any attempt, whatsoever, to ascertain as to how much salary is being paid by the Assessee Bank to its Chairman and hence it has not examined as to whether the residential quarters in question can still be regarded as an asset of the Assessee or not.

7. Similarly, we need to notice Clause (b) of the Explanation relating to urban land. The expression 'Urban Land' is defined in inclusive terms in the following words:

*"(b) "urban land" means land
situate-*

(i) in any area which is comprised

within the jurisdiction of a municipality (whether known as a municipality, municipal corporation, notified area committee, town area committee, town committee, or by any other name) or a cantonment board and which has a population of not less than ten thousand according to the last preceding census of which the relevant figures have been published before the valuation date; or

(ii) in any area within such distance, not being more than eight kilometers from the local limits of any municipality or cantonment board referred to in sub-clause (i), as the Central Government may, having regard to the extent of, and scope for, urbanisation of that area and other relevant considerations, specify in this behalf by notification in the Official Gazette”.

8. A quick look at this expression also makes it clear that an exception has been carved out by not including certain urban land varieties of vacant land. For our purposes, it is important to notice that any unused land, held by the Assessee for industrial purposes for a period of 2 years from the date of its acquisition, has been kept outside the purview of the meaning as ascribed to the expression 'Urban Land'. Since the Assessing Officer has taken note of the value

of the assets from the depreciation statement filed for purposes of reckoning income tax by the Assessee wherein the building sites purchased during the year ended on 31st March 1999 have been reflected, it would be safe to infer that the Assessee has acquired those building sites during the year that ended on 31st March 1999. If that be the case, such unused land held by the Assessee for the period of 2 years from the date of acquisition falls outside the definition ascribed to the expression 'Urban Land', provided such vacant land is held for industrial purposes.

9. That brings to the core question as to whether the Assessee is carrying on any industrial activity or not. It is now beyond any pale of doubt that Banking business activity carried on by entities like the Assessee have firmly been recognised as industrial activity, no doubt for purposes of Industrial Disputes Act, 1947, in the context of retrenchment of employees working in such Banking Institutions, the question came to be examined and it was answered that those who satisfied the definition of 'workmen' assigned to that expression under Section 2(s) of the Industrial Disputes Act, 1947 are liable to be treated as workmen of the Banking Industry and in any number of cases, the Supreme Court has applied the beneficial principles behind

Section 25F read with Section 2(oo) of the Industrial Disputes Act, see ***State Bank of India vs. Shri N.Sundara Money {1976 (1) SCC 822}***.

10. Therefore, carrying on the core business of Banking certainly answers "industrial activity". Though in the context of the applicability of the Industrial Disputes Act, 1947, such an interpretation has been placed, but we do not see any justifiable reason to disregard such a meaning assigned to the Banking activity for purposes of understanding the expression 'industrial purposes' used in Clause (b) of the Explanation found under Section 2(ea) of the Wealth Tax Act, 1957. All the more so, in the absence of any specific meaning ascribed to the expression 'industrial purposes' by the said Act, we, therefore, consider it safe to treat the Banking activity carried on by the Assessee as an Industrial Enterprise and, hence, we hold that any vacant land held by it, its usage, falls squarely within the expressions 'industrial purposes' and, hence, for a period of 2 years from the date of acquisition of such a vacant urban land, the same is liable to be kept outside the purview of the expression 'asset' described under Section 2(ea) of the Wealth Tax Act. Unfortunately, in that direction no attention has been paid by any of the 3 Authorities,

who dealt with the case of the Assessee, in this regard.

11. Shri J.Narayanaswamy, learned Standing Counsel for the Department, strenuously urged that all the 3 Authorities, namely, the Assessing Officer, the Appellate Commissioner and the Income Tax Appellate Tribunal, have concurrently held that residential quarters allotted to the Chairman of the Assessee and the vacant land, were treated as assets and hence no interference, from such a finding of fact concurrently recorded, is warranted.

12. In normal circumstances, we do not have made an attempt to upset the concurrent finding of fact recorded by all 3 Agencies, but, however, when the very legal provision providing the basis for doing so has not been understood properly, we feel that it is incumbent for us to decipher the meaning ascribed to those expressions and hence we attempted to find answers in the preceding paragraphs. Otherwise a concurrent finding of fact, which is based upon a correct understanding of the legal principles and upon a proper appreciation and analysis of the material available on record is seldom interfered with.

13. One important feature which requires to be noticed is that the Assessee made a claim for proportionate liability for all the three assets which it has disclosed in its Wealth Tax Return. Though the claim for proportionate liability is accepted at the first instance, but, however, the assessment was reopened only for purposes of examining the correctness of such a claim. In the instant case, it is therefore appropriate to examine the correctness behind the claim of the Assessee with regard to the proportionate liability.

14. The expression 'net wealth' has been defined in Section 2(m) of the Wealth Tax Act, in the following words:-

"(m) "net wealth" means the amount by which the aggregate value computed in accordance with the provisions of this Act of all the assets, wherever located, belonging to the assessee on the valuation date, including assets required to be included in his net wealth as on that date under this Act, is in excess of the aggregate value of all the debts owed by the assessee [on the valuation date which have been incurred in relation to the said assets;]".

15. A perusal of the definition quoted supra clearly brings

out that the aggregate value of all the assets is required to be computed in accordance with the provisions of the said Act and, in case, the aggregate value of all debts owed by the Assessee have been incurred in relation to the said assets are also required to be noticed. Section 7 has dealt with as to how the value of the assets are to be determined. Sub-section (1) thereof makes it clear that the value of any asset, other than cash, shall be its value as on the valuation date as determined in the manner laid down in Schedule-III of the said Act. Schedule-III comprised of various Parts. Part-A has listed out the general rules for determining the value of the assets, while Part-B dealt with the general rules for exclusive valuation of immovable property. Part-C was, in fact, omitted by the Finance Act, 1992, which was brought into force with effect from 1.4.1993. Part-D dealt with the valuation of the assets of business. We are concerned in this case, with the assets of business. Para 14 of Part-D of Schedule-III of the Act makes it clear that where the Assessee is carrying on a business for which accounts are maintained by him regularly, a net value of the business as a whole having regard to the Balance Sheet of such business, shall be taken as the value of such assets for purposes of the Wealth Tax Act. The Proviso added to this Para 14 reads as under:-

"Provided that where it is not possible to calculate the amount of debt so

utilised, it shall be taken as the amount which bears the same proportion to the total of the debts owed by the assessee as the value of that asset bears to the total value of the assets of the business."

16. The Commissioner of Appeals has virtually declared that Rule 14 comprising of Part-D of the Schedule-III of the Act does, not apply only on the ground that the net value of all the assets of the business, as a whole, are not undertaken in the instant case. The reasoning assigned by the Commissioner of Appeals is hardly satisfactory. Rule 14 of Part D of the Schedule-III of the Act, dealt with valuation of the assets of the business. When the whole of the assets of the business are being assessed, the particular assets which the Assessee has declared in its Wealth Tax Return, cannot be kept outside the assets of the business. Therefore, the applicability of Rule 14 cannot be circumvented. The Proviso to Rule 14 declares that where it is not possible to calculate the amount of debt so utilised for acquiring the asset in question, then a formula was evolved to take the amount which bears the same proportion to the total of the debts owed by the Assessee as the value of the particular asset bears to the total value of the assets of the business. Proviso, in fact, lends support to our view that each of the assets of the business are also required to be

determined for their value in accordance with Para 14 of Part D of Schedule III of the Act. Otherwise, no meaning can be ascribed to the Proviso. When once all the assets of the business are sought to be valued, the necessity to undertake individual or proportionate distribution of the debts is not required to be undertaken separately. It is a fundamental principle of law that no part of a Statute should be construed as carrying no meaning at all. Every provision must be construed as intended to achieve some purpose or object by the Statute Maker. In other words, no provision of the Statute can be treated as otiose or useless. Keeping those principles in mind, when the Proviso to Rule 14 is examined, it becomes clear that the same will be applicable where it is not possible to calculate the amount of debt that is utilised for purposes of acquiring each of the assets and the formula contained therein brings out the theory of proportionate liability and the principle that would become applicable.

17. In that view of the matter, the Assessee has made a claim to extend the proportionate liability to the value of the 3 assets that was initially applied by the Assessing Officer, but however, it was taken up for re-examination under Section 17 of the Act. Unfortunately, the re-examination has not been confined to that

specific area at all and it went into the merits of the matter.

18. In normal circumstances, we would have remanded the matter back for consideration afresh by the Assessing Authority. But, however, due to lapse of more than 15 years period and also in view of the fact that the Wealth Tax Act itself has already been done away with, we find that no useful purpose would be served in remanding the matter and hence, we restore the original order passed by the Assessing Authority under Section 16(1) of the Act, and the appeals stand accordingly allowed to the extent indicated supra. No costs. Consequently connected miscellaneous petitions are closed.

(N.R.R.,J) (Dr.P.D.S., J)
08-09-2016

Index : Yes.
Internet: Yes.
Svn

NOOTY. RAMAMOHANA RAO, J
AND
Dr.P.DEVADASS, J

Svn

T.C.A.Nos.961 to 963 of 2007

08-09-2016