



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WEALTH TAX APPEAL NO. 923 OF 2007

Hindustan Construction Co. Ltd.
Hincon House, L.B.S. Marg,
Vikhroli (West),
Mumbai 400 083. ... Appellant

Versus

Wealth Tax Officer,
Deputy Commissioner of Income Tax,
Central Circle XXII,
Room No. 403, Ayakar Bhavan,
Mumbai. ... Respondent
The Commissioner of Wealth Tax ... Respondent

Mr. Sanjiv H. Shah for the Appellant.

Mr. P.P. Bhosale with Mr. B.M. Chatterjee and
Mr. P.S. Sahadevan for the Respondent.

CORAM: F.I. REBELLO &
R.S. MOHITE, JJ.
DATED: JANUARY 09, 2008

ORAL JUDGMENT (Per F.I. Rebello, J.):

. This is an appeal against the order passed by I.T.A.T. in two Wealth Tax Appeals for the assessment year 2002-03 and 2003-04. In the present appeal, we are concerned with the assessment year 2002-03. The first question framed for the consideration reads as under :

"Whether on the facts and in the circumstances of the case and in law, the Tribunal's was justified in holding that the flats in the impugned premises allotted to the Appellant's employees does not fall



within the four corners of the exception embedded in sub clause (1) of clause (i) of Section 2(ea) of the Act?"

. Considering the terminology used in sub clause (1) of Clause 2(ea) of the Wealth Tax Act in the case of Benett Collemn, we have held that the provision applies not only to Director but other categories mentioned therein and that includes employee as also officer. There is therefore, no merit in the first question which is accordingly dismissed.

. In so far as third question is concerned, the same reads as under :

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the impugned premises ought to be valued at cost of acquisition in accordance with the second proviso to Rule 3 of Schedule III to the Act vis-a-vis the rent capitalization espoused by the Appellant as mandated by main part of the said Rule 3?"

. The learned tribunal reproduced the relevant rule which is second proviso to Rule 3 of Schedule III of the Wealth Tax Act and which reads as under :

"Provided further that where such property is acquired or constructed of which is completed after 31.03.74, if the value so arrived at is lower than the cost of acquisition or the cost of construction, as increased, in either case by the cost of any improvement to the property, the cost of acquisition or, as the case may be, the cost of construction, as so increased, shall be taken to be the value of the property under this rule."

. We are in agreement with the construction given by the tribunal to the said provision and consequently the said question would not arise.

. In so far as question No. 4 is concerned, the same would not be substantial question of law and consequently would not arise.

. In so far as question No. 5 is concerned, the same reads as under :

"Whether on the facts and circumstances of the Appellant's case and in law, the Respondent was justified in exacting the Appellant with interest under Section 17B?"

. We find from the order of the Tribunal that this was not in issue and consequently is not required to be answered.

. That leaves us question No. 2 which reads as under :

"Whether on the facts and in the circumstances of the case and in law whether the Tribunal was correct in adjudicating ground no. 1 of the memo of appeal only partially in the sense that it failed to take cognizance of the fact the Appellant's case is covered by exception (3) of clause (i) of Section 2(ea) of the Act?"

. The major contention on behalf of the appellant was that the tribunal has not answered the same.

. As question No. 2 is framed was not answered though it has been contended on behalf of the appellant that it was raised and as in the arguments filed before the Commissioner (Appeals), we find that it was raised, the ends of justice will require that in so far as this question is concerned, the impugned order is set aside and the matter is remanded back to the tribunal for reconsideration. If the tribunal holds with the appellant, the consequential relief of interest may also be



considered on that aspect only. In so far as other questions are concerned, we find no merit. For the aforesaid reasons, the impugned order is set aside and the matter remanded back to the tribunal for answering de novo, question No. 2 as framed with consequential directions.

(R.S. MOHITE, J.)

(F.I.REBELLO, J.)