

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 540 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI
HONOURABLE MS.JUSTICE HARSHA DEVANI

=====

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

=====

COMMISSIONER OF WEALTH TAX - Appellant(s)

Versus

DR.NARAYAN T. BADDI - Opponent(s)

=====

Appearance :

MR MANISH R BHATT for Appellant(s) : 1,

MR BHARGAV KARIA for MR RK PATEL for Opponent(s) : 1,

=====

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MS.JUSTICE HARSHA DEVANI

Date : 16/06/2012

ORAL JUDGMENT

(Per: HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. By this appeal under section 27A of the Wealth Tax Act, 1957, the appellant-revenue has challenged order dated

01.06.2005 passed by the Income Tax Appellate Tribunal, Ahmedabad Bench 'D' (hereinafter referred to as the 'Tribunal') in WTA No.62/Ahmedabad/2004.

2. By an order dated 27.09.2006, this court, while admitting the appeal had formulated the following substantial question of law:

“Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the properties at Worli, Mumbai owned by the assessee was outside the purview of the 'asset' because this property was commercial property, ignoring the fact that sub-clauses (4) and (5) of the clause (i) of Section 2(ea) were brought on the statute only with effect from 01.04.1999 through the Finance (No. 2) Act, 1999?”

3. The assessee filed its return of wealth for the assessment year 1996-97 on 21.10.1997 showing net wealth of Rs. 7,34,000/-. In the wealth tax return the value of two properties, that is, office premises at Worli, Mumbai and bungalow at Versova Beach was shown to be Rs.73,756/- and Rs.4,92,378/- respectively. However, in the Special Audit Report received under section 142(2A) of the Income Tax Act, 1961, the value of the two properties was worked out at Rs.1,24,42,237/- and Rs.2,12,50,000/- respectively. The auditors, accordingly, estimated the market value of these two properties as on the valuation date at Rs.3,36,92,237/- as against the market value of Rs.5,66,134/- shown in the return. The assessment was, therefore, reopened under section 17 of the Act. In the assessment order framed under section 16(3) read with section 17 of the Act, the market value of these two

properties was taken at Rs.3,36,92,237/- as against the value of Rs.5,66,134/- disclosed in the original return. The present case pertains to the property situated at Worli in respect of which the Assessing Officer made assessment at Rs.1,24,42,237/- as against Rs. 73,256/- as declared by the assessee.

4. The assessee carried the matter in appeal before the Commissioner (Appeals), contending that the definition of “net wealth” read with the definition of “asset” in section 2(ea) of the Act does not include a commercial building/property let out to a tenant and hence, the same cannot be subjected to wealth tax. It was contended that though the value of the property in question was shown as part of the taxable wealth in the return filed by the assessee, as per the provisions of law, the same was not subject to wealth tax and therefore the addition of Rs.1,24,42,237/- should be deleted. The Commissioner (Appeals) observed that in the proceedings under the Income Tax Act, 1961 the receipt of the rent from the property situated at Worli was taxed as “income from house property” and it was held that the income from the said property is not business income. According, to him, the asset was not a commercial asset and consequently not exempt from the definition of “assets” for the purpose of charge of wealth-tax. He, therefore, did not accept the claim of the assessee that the property was exempt under section 2(ea)(1)(5) of the Act. The Commissioner (Appeals) further observed that the property had been included in the net taxable wealth not only because the

assessee had declared the asset in the computation of wealth tax but because on facts the asset was not a business asset.

5. The assessee carried the matter in further appeal before the Tribunal and succeeded. The Tribunal, in the impugned order has observed that the income of the assessee, in relation to the house property at Worli, Mumbai, was assessed as 'income from house property' as against the claim of the assessee that it was assessable under the head 'income from business'. In the income tax appeal, the Tribunal held that the Assessing Officer was right in assessing the income from the said property under the head "income from house property". It was the case of the assessee that in any event the asset was a commercial asset, and therefore, did not constitute asset as envisaged under Section 2(ea)(i)(5) of the Act. The tribunal held that the asset was not a non-productive asset and accordingly held that the same could not be valued as an asset and be assessed under the Wealth Tax Act.
6. Mr. Manish Bhatt, learned senior standing counsel appearing on behalf of the appellant assailed the impugned order by placing reliance on the findings recorded by the Assessing Officer as well as the Commissioner (Appeals).
7. Opposing the appeal, Mr. Bhargav Karia, learned advocate for the respondent-assessee made reference to section

2(ea)(i) of the Act. Section 2(ea) of the Act as it stood at the relevant time, and insofar as the same is relevant for the present purpose reads as under:

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

(I) any guest house and any residential house including a farm house situated within twenty-five kilometres from the local limits of any 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, but does not include-

(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 two lac rupees;

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

8. Reference was also made to section 2(ea) as amended by the Finance (No.2) Act, 1996 with effect from 1.4.1997 which insofar as the same is relevant for the present purpose reads thus:

(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 farmhouse 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, but does not include—

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

9. Drawing the distinction between section 2(ea)(i) as it stood prior to and after 1.4.1997, it was submitted that prior to 1.4.1997 the words “commercial purposes” did not find place in the definition of assets and as such buildings used for commercial purposes were not taxable under section 3 of the Act prior to 1.4.1997 and as such the Tribunal was justified in holding that the asset in question could not have been assessed under the Wealth Tax Act.

10. Having regard to the facts of the case as well as the submissions advanced by the learned counsel for the respective parties, this court is of the opinion that the question as formulated while admitting the appeal requires to be reformulated as under:

“Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding

that the property at Worli, Mumbai owned by the assessee was outside the purview of the expression “assets” as defined under clause (i) of section 2(ea) of the Wealth-tax Act, 1957.

11. Before advertng to the merits of the case, it may be germane to notice certain statutory provisions. Section 3 of the Act which is the charging section provides for levy of wealth-tax in respect of the net wealth on the corresponding valuation date of every individual, Hindu undivided family and company at the specified rates. “Net wealth” is defined under section 2(m) of the Act to mean the amount by which the aggregate value computed in accordance with the provisions of the 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 on that date under the 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. Thus, net wealth is to be computed on the aggregate of the value of the assets belonging to the assessee as stipulated thereunder. Therefore, for the purpose of falling with in the ambit of net wealth, the value of the assets belonging to an assessee is required to be taken into consideration. In relation to the assessment year commencing on the first day of April, 1993, or any subsequent assessment year, the expression “assets” has been defined under section 2(ea) of the Act. In the present case we are concerned with clause (i) of section 2(ea) of the Act which has been reproduced hereinabove.

12. The core and only question that arises for consideration is as to whether the property in question, viz. property at 604, Sterling Centre, Worli is an asset as contemplated under section 2(ea)(i) so as to fall within the ambit of “net wealth” under section 2(m) of the Act. As is apparent on a plain reading of section 2(ea)(i) as it stood at the relevant time and as amended by the Finance (No.2) Act, 1997 it is apparent that prior to 1.04.1997 the words “commercial purposes” did not find place therein. It is only with effect from 01.04.1997 that the words “commercial purposes” came to be inserted in clause (i) of section 2(ea) of the Act. Thus, it is apparent that it is the nature of the building which is the determinative factor for the purpose of deciding whether the same is an asset as contemplated under section 2(ea)(i) of the Act. Prior to 1.04.1997 a building used for commercial purposes was clearly not an asset under section 2(ea)(i) of the Act.
13. In the facts of the present case, in the year under consideration the property in question had been given on rent by the assessee to Indian Additives Ltd, which has been taxed as “income from house property” and as rightly observed by the Tribunal, is not a non-productive asset. The property in question, therefore, bears the character of a commercial property which was not included in the definition of asset as defined under section 2(ea)(i) of the Act as it stood prior to 1.4.1997. The tribunal was, therefore, justified in holding that the property in question was outside the purview of the expression “asset” as defined under section 2(ea)(i) of

the Act. The question, accordingly stands answered in the affirmative, that is, in favour of the assessee and against the revenue.

14. The above view is reinforced by the decision of the Calcutta High Court in the case of **Maynak Poddar (HUF) Vs. Wealth Tax Officer**, (2003) 262 ITR 633 wherein it has been held thus:

“The buildings used for business or commercial purpose were not taxable under section 3 of the Wealth-tax Act until amended. The expression used in section 3 before amendment is clear and unambiguous. It had specified the buildings, which were included in the definition of asset. It included guest house, residential building, farm house situated within 25 kilometres of the municipal town. But did not include commercial building. It had specifically referred to some kinds of buildings while it omitted to include the other kinds. Therefore, only the kinds included are taxable and not the others.”

“This position becomes clear by reason of the amendment sought to be brought about, as is apparent from the amendment effective from April 1, 1997. The amended provision included building used for commercial purposes. This itself indicates that the buildings used for commercial purposes were not subject-matter of taxation prior to the said amendment. This was explained at page 238 of [\[1996\] 220 ITR \(St.\)](#). This explanation is self-explanatory. We would do better if we leave at that and quote the explanation itself, viz.: “The proposed amendment seeks to enlarge the definition of assets. Under the existing provisions, assets include guest house, residential house and farm house. It is proposed to include in the definition any house whether used for residential or commercial purposes or as guest house. It is also proposed to exclude any house allotted by a company to its employees, etc., and any house, which is used as stock-in-trade or a house used by the assessee for the purposes of his business.” This is further clarified at page 282 of [\[1996\] 220 ITR \(St.\)](#), we do not think we need to explain or add

anything to it except quoting it : "The term 'assets', on which tax is to be levied, is defined in clause (ea) of section 2. This definition includes any guest house and any residential house (including a farm house situated within 25 kms. of the local limits of any municipality) for levy of tax, except the exclusions made in items (1) and (2) of sub-clause (i) of this clause. If residential houses have been taken as assets, there seems to be no reason why commercial properties, other than those used by the assessee wholly and exclusively in his business or profession, should also be not taken as assets. It is, therefore, proposed to tax commercial buildings, which are not used by the assessee in his business or profession, other than the business of letting out of properties."

However, we are not called upon to decide the meaning of the phrase "other than the business of letting out of properties", therefore, we do not make any observation with regard thereto and keep it open for decision on an appropriate time and issue. However, this explanation clearly indicates that a commercial property whether let out or not, was outside the scope of the existing provision of section 2(ea) until amended in 1997.

Thus, unless the definition of "net wealth" read with the definition of "asset" as provided in section 2(m) and section 2(ea), respectively, includes a building let out to a tenant used for commercial purposes, the same cannot be subjected to wealth-tax. Even if the assessee had included the same in his return, that would not preclude the assessee from claiming the benefit of law. There cannot be any estoppel against the statute. A property, which is not otherwise taxable, cannot become taxable because of misunderstanding or wrong understanding of law by the assessee or because of his admission or on his misapprehension. If in law an item is not taxable, no amount of admission or misapprehension can make it taxable. The taxability or the authority to impose tax is independent of admission. Neither there can be any waiver of the right by the assessee. The Department cannot rely upon any such admission or misapprehension if it is not otherwise taxable."

15. For the foregoing reasons, the appeal fails and, is accordingly, dismissed with no order as to costs.

[AKIL KURESHI, J.]

[HARSHA DEVANI, J.]

JYOTI

